Supreme Court of the United States

OCTOBER TERM, 1965

No. 940

JOSEPH A. RINALDI, APPELLANT

vs.

HOWARD YEAGER, WARDEN, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action Docket No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

vs.

HOWARD YEAGER, Warden, A.L. DEMPSKY, Business Manager, N.J. State Prison, Trenton, N.J. and HARRY LERNER, Essex County Treasurer. DEFENDANT(S)

COMPLAINT FOR INJUNCTION AND DECLARATORY JUDGMENT. Filed January 24, 1964

TO: THE HONORABLE JUSTICES, AND ASSOCIATES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NEWARK, NEW JERSEY.

COMES NOW, Joseph A. Rinaldi, complaining of Howard Yeager, as Warden of the New Jersey State Prison at Trenton, New Jersey, A. L. Dempsky, Business Manager of the State Prison Accounts, and Harry Lerner, Essex County Treasurer, said defendant(s) in the above listed cause of action and complains as follows:

I

That the complainant herein is a citizen, resident and person of the United States of America and that he is now and has been an inmate of the New Jersey State Prison. At present complainant is confined to the annex of the Prison in Rahway, New Jersey, viz, Rahway Prison Farm.

II

Plaintiff is being denied the right to Due Process of the laws and being further subject to Cruel and Unusual punishment in violation to the Seventh, Eighth and Fourteenth Amendments of the United States Constitution and various citations of the laws of the land incorporated in the substance of this application, and to the best of Plaintiff's lay knowledge there are no other cause or pretence for this complaint.

[fol. 2]

STATEMENT OF FACTS

Plaintiff, Joseph A. Rinaldi, has been convicted by way of trial by jury in a criminal action in the Superior Court of New Jersey, in and for the County of Essex, Newark, New Jersey. Subsequently and by law, an appeal was taken to the Superior Court, Appellate Division, and that the Plaintiff mentioned in this Complaint appealed in Forma Pauperis.

The Appellate Division of the Superior Court granted Leave to Appeal as an indigent person, and ordered that a copy of the trial transcript be made for the aid and preparation of briefs on appeal.

A copy of the Trial Transcript was *loaned* to the appellant and thereafter returned to the Essex County Clerks Office as ordered.

On date of November 13th 1963 A.D. Plaintiff received a copy of Institutional Correspondence from the Business Office, aprising him that the payment of said transcript would be deducted from his institutional earnings and forwarded to the Essex County Treasurer.

Copy of Notice appended, (A-1).

The Garnishment is presently in effect and the *full amount* of earnings of the Plaintiff are being deducted and forwarded to the Essex County Treasurer, pursuant to *N.J.S. 2A:157-18.* which will be more clearly elaborated on further herein, for this Honorable Courts convenience and proper consideration.

Let this Honorable Court please note, that the Plaintiff was only once notified of this Garnishment as mentioned

supra, in strict conflict to the Constitutional mandates governing Civil Action and July Trial, as will be further expressed herein.

ARGUMENT

PLAINTIFF IS BEING SUBJECT TO CRUEL AND UNUSUAL PUNISHMENT AND A STRICT DENIAL OF DUE PROCESS OF THE LAWS. IN VIOLATION AND CONFLICT TO THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

POINT I

PLAINTIFF IS BEING SUBJECT TO GARNISHMENT OF HIS FULL WAGES SUFFERING THE DENIAL OF THE RIGHT TO FURTHER LITIGATION, MANY PERSONAL NEEDS, A DENIAL OF DUE PROCESS AND DISCRIMINATION.

[fol. 3] The Eighth Amendment of the United States Constitution; guarantees that:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

Plaintiff alleges and contends that due to the Garnishment *per se* he is being subject to cruel and unusual punishment, wherefore the plaintiff works to the very best of his ability doing his job and duties while confined and yet at the end of the month, when the full population of the said Institution is paid for services rendered, his (plaintiff's) pay is garnished for the payment of said transcript, which is not for the purchase of the same but only for the temporary use during the preparation of briefs on appeal. That at this time the said transcript being paid for by the plaintiff is not in his possession or use and has long been before this date returned to the Essex County Clerk.

Plaintiff alleges and contends that due to the unconstitutional garnishment of his hard-earned wages he is without many personal needs such as listed herein:

1. Paper and facilities to prepare legal actions concerning Habeas Corpus and his possible release and or whatever other litigation or mailing services are required, such as stamps, typewriter ribbons, literature, law reports pertinent to his cause, and that all the above listed as well as more, that has to be supplied by the inmates own personal means, i.e. wages from their institutional employment. To enlighten the Court further, and not to lengthen this contention, let it be noted that plaintiff as well as the population of other inmates, must buy through their own monies all personal paper and items listed, that the authorities of this institution will not supply any indigent with the same, except for food, bedding, clothing, and essentials.

2. Set aside the needs of the plaintiff pertaining to litigation and further consider the personal needs, such as, toilet articles, cigarettes and tobacco, extra food from the inmate commissary, stamps and paper and means of correspondence that will better his education and future, which can be well elaborated on and amount to a lengthly brief in itself.

3. Further pointed out, that Law Reports, Books of Procedure and Law cannot be obtained through any means of this institution nor thorugh the State Libray system. That in the Institution Library there is not one listed law book for the aid of your plaintiff nor any other inmate of said institution. The many applications for freedom and manifest injustice made in the past are solely through the personal
[fol. 4] means of each and every applicant and not with the aid of the institution, authorities or associates.

Let it be noted at this point, that plaintiff is presently involved in litigation in the courts, concerning his conviction as far as the United States Supreme Court. That from this unconstitutional garnishment of wages, plaintiff's litigation will become moot without the monies and facilities to continue. Let it be noted, that if the State, County, or institutional authorities wish to garnishee the wages of your plaintiff, then an Order be granted that all needs, personal and otherwise be afforded the plaintiff through the full course of this garnishment.

The institutional rule is, that any inmate who works will not receive any toilet articles or tobacco nor any other items that are afforded an inmate who does not work. In this case, although the plaintiff works, some, five days a week, he is not allowed tobacco, toliet articles such as razor blades, writing paper, stamps, paper, and facillities for litigation in the Courts.

Let it be noted further at this point, that the paper which this Complaint is typewritten on has been borrowed from another inmate who is more fortunate than your plaintiff, and further that the institutional rules are that no inmate will borrow or lend to another, anything whatsoever, including his typewriter and facilities, unless complied with, discplinary action will be had, and punishment administered.

Due to the small and few facts alleged *supra*, plaintiff herein is being subject to "cruel and unusual punishment", contrary to the guarantee of the Eighth Amendment of our United States Constitution, an inherent right to all citizens of our United States of America.

The Court will find from the oral hearing of this cause that plaintiff can and will submit more parol and documentry proof of the unconstitutional acts alleged, and not to lengthen this Complaint nor burden this Honorable Court has listed the same to a minimum praying to suffice so that summons will issue to the defendant(s) and the relief in quest be granted and the defendant(s) [fol. 5] be restrained until final decree of this Honorable Court.

CONSTITUTIONAL LAW

The Eighth Amendments guarantee against cruel and unusual punishment is applicable through the due process clause of the Fourteenth Amendment. U.S.C.A. Const. Amends, 8, 14.

CIVIL RIGHTS

Federal remedy of an action under the Civil Rights act is supplementry to a State remedy and need not be first sought and refused before the Federal one is invoked. 42 U.S.C.A. § 1983.

CIVIL RIGHTS OF CONVICTS

> A prisoner duly convicted and incarcerated in a penitentiary does not thereby suffer the loss of all his Civil Rights, and such a prisoner may invoke provisions of the Civil Rights Act. 42 U.S.C.A. § 1983

Plaintiff, therefore appears before the bar in due form and procedural manner, pursuant to the laws guaranteed by the Civil Rights Act. Plaintiff further moves to this Courts consideration and decree under jurisdictional right pursuant as follows in the doctrine of *Ortega* vs. *Ragen*, 216 F. 2d 561 (7th. Cir., 1954):

> 'The *Ortega* case holds in part, that a Federal District Court has jurisdiction of actions arising under the Civil Rights act, 42 U.S.C.A. §§ 1981-1955, without regard to either diversity of citizenship or the requisite dollar amount."

Plaintiff further relies on the late Federal precedent of *Robinsion* vs. *California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed. 2d 753 (1962). Wherein the Eighth Amendments guarantee against cruel and unusual punishment was applied through the due process clause of the Fourteenth Amendment.

Plaintiff need not cause burden to this Honorable Court relying on the knowledge and experience of law therein, and therefore will not submit lengthy citations concerning the requirements of law and precedent bringing this cause before the Court as a Court of Competent Jurisdiction, and states the main facts sworn to as meritorious, so that a temporary injunction issue, and summons of the defendant(s) be had for the oral hearing of this cause.

Please let the Court note, although an indigent person has right to appeal or submit actions concerning his de-
[fol. 6] tention and confinement, the needs and facilities to procure the same must be at hand. As said *supra*, and not to be repetitious, this institution will not and does not supply any of the important needs to one seeking relief by way of legal remedy in the courts. Although (will this Honorable Court) there is a secluded room out of the reach of inmates confined herein, where an old but suita-

ble library of law books are stored for no apparent good reason. Last stating in this point that elaboration will be made upon the formal hearing of this cause.

POINT II

AS A FURTHER VIOLATION OF THE CIVIL RIGHTS ACT, PLAINTIF IS BEING SUBJECT TO DISCRIMINATION IN THIS UNLAWFUL GARNISHMENT OF WAGES.

Pursuant to N.J.S. 2A:152-17, as follows:

> Where each person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings of the trial court are needed therefore he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof may certify the expense and amount thereof to the County Treasurer who shall thereupon pay such expense. L. 1956 c134 p. 555 Section 1.

As stated in the Statutory enactment supra, Plaintiff appealed accordingly and was granted the transcript, however, *only for the use of a thirty-day period.* Should he therefore be subject to garnishment for property not in his possession or ownership?

Further, N.J.S. 2A: 152-18, states as follows:

> The County Treasurer shall file a notice of said payment and the amount thereof with the institution of which said person, upon whose application the transcript of the record was prepared, and to the extent of the expense incurred, the County Treasurer shall be reimbused from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L. 1956 c134 p. 555 Section 2.

at this point, plaintiff will submit as pointed out *supra*, where the discrimination takes effect.

[fol. 7] It will be interesting to note, from a clear examination of the records, throughout the many thousand

of appeals by indigent persons so confined, very few prisoners have made payment for the transcripts as in the case at bar. Moreso the amount at this time seems to be under ten. Let it also be noted that as stated in the facts of the Complaint, the plaintiff herein has been convicted in the Essex County Court, and a clear viewing of the records will prove that the plaintiff now before the bar is being discriminated against to a great extent, for if the statutory provisions were carried out from the time of enactment, every person appealing their conviction comes under the supervision of the same. Why then should not all those who have lost their appeals also be subject to the garnishment?

This is not the means of your plaintiff to appear before the bar for consideration, for plaintiff does not want to cause harm to others, moreover plaintiff wishes to point out with great emphasis the discrimination involved, thereby invoking the Civil Rights Act, and Constitutional protection, as being meritorious in this cause of action.

POINT III

PLAINTIFF WAS DENIED THE RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS COUPLED WITH THE SEVENTH ARTICLE OF THE UNITED STATES CONSTITUTION.

Plaintiff contends as an addition to his complaint, that pursuant to the provisions of Article Seven of the United States Constitution he was further denied due process of the law, guaranteed by the United States Constitution, Amendment Fourteen.

Article Seven of the United States Constitution provides as follows:

> "In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

It is also similarly provided in the New Jersey Constitution Article Nine, that all Civil Action be tried by Jury.

[fol. 8] Therefore in this case, it should be conceded that the plaintiff is being further subject to prejudice without due process of law, as provided by both Constitutions *supra*, that either the Statutes enacted by Legislature should be declared void as conflicting to the Constitutional provisions or that the provisions of the Constitution be awarded in all civil causes and therefore have been denied to the Plaintiff in this action.

It is also contended that the Plaintiff has been denied due process pursuant to the rules of garnishment, for he has neither been summoned before the bar or heard in this cause prior to the garnishment being made. Pursuant to Civil Procedure in New Jersey as well as Federal Courts, the same has been completely disregarded, and if granted prior to this garnishment, Plaintiff would have not been subject to the cruel and unusual punishments being inadvertedly inflicted upon him.

As a last statement in view of the garnishment laws, even if allowed by a Court of competent jurisdiction the full amount of earning would by no means be garnisheed, moreover a percentage decreed by the Court wherein the cause was heard.

Again plaintiff does not fully argue against the garnishment, if due to the same, the institution or the County will duly allow all the facilities needed to perfect litigation, not to point out the many items needed, and also to allow the plaintiff the same means of purchasing from the inmates store, as other inmates do from earnings made in the institution.

A question to the Court at this time is, "Should not the Comittment be regarded in full force?", that each and every inmate be confined *without costs.*

Are the Federal Courts aware of the facts herein submitted, that one seeking redress of his conviction as an indigent person, is without the proper materials and facillities very well needed, without any legal material whatsoever, literature, paper, etc.?

Are the Courts also aware that a convict attempting to gain his freedom by the way of right, must sell his [fol. 9] blood, to gain a few extra dollars for the proper facilities . . . must work at a job for twenty-cents a day . . . eight hours a day, forty-hours per week and then be

subject to the garnishment of his *full* wages to pay for the transcript of his trial, *not to have possession of that he is paying for, but only borrow the same for a period of thirty days.*

Please be it noted, that an indigent person with a meritorious complaint makes his contention known to the Courts, and is answered to present his claim or action pursuant to the rules of the Court. The book entitled Rules of the Supreme Court of New Jersey costs twelve-dollars, the indigent person confined makes four-dollars per month. A law report costs one-dollar, a ream of paper costs over one-dollar & fifty-cents, a ribbon for a typewriter (if he is fortunate enough to have one) costs over a dollar, and not to mention the various prices of other essential items such as postage stamps, soap, razor blades, toothpaste, etc.

For the respect of this Honorable Court, Plaintiff does not continue with the many detailed facts of great prejudice that can be submitted for consideration and therefore pray that the relief requested in the following prayer be granted and the plaintiff be brought before the bar to have final disposition of this cause upon further parol hearing and presentation, with the aid of requested counsel to prepare a supplement brief in more apropos manner.

Plaintiff praying for relief under the Eighth and Fourteenth Amendments, prays that this Honorable Courts consideration be broad and elastic in view of the treatment the plaintiff is being subject to, for there can be no doubt that discrimination . . . denial of actions in Courts of law . . . coupled with the hard earned wages being fully and unlawfully taken from the indigent plaintiff, the provisions of both the Eighth and Fourteenth Amendments are well in scope of consideration.

[fol. 10] PRAYER

Plaintiff moves that this Honorable Court upon due and proper consideration, order and adjudge that the defendants herein named desist, cease and stop the unlawful garnishment of plaintiff's hard earned wages thereby causing cruel and unusual punishments to be inflicted. That this be done *pro tempore* with an *Injunction* and

after final hearing by both sides to this action by the Courts decree a *Declaratory Judgment*, and; or whatever this Honorable Court so decrees final and just in this cause, be ordered.

Plaintiff moves this Honorable Court and the associates therein to have summoned before this Honorable Court all parties mentioned as defendant(s) to this action so final and parol evidence can be had for full consideration and decree.

INTERVENTION BY OTHER PARTIES

That leave be granted upon application by any and all other inmates of said penal institution who may so desire to join in this proceeding and participate in and receive the benefits thereof upon such terms and conditions as this Honorable Court may, upon such application deem just and equitable.

CONCLUSION

WHEREFORE: The Plaintiff prays that this Honorable Court grant the relief being sought in good faith.

Respectfully submitted,

/s/ Joseph A. Rinaldi—Plaintiff Pro se

DATED THIS 6th DAY OF JANUARY, A.D. 1964

[fol. 11] EXHIBIT "A-1" TO COMPLAINT

(THIS IS A CERTIFIED TRUE COPY)

N. J. STATE PRISON
CLASSIFICATION DEPARTMENT

DATE: 11/13/63

TO: Mr. A. L. Dempsky
Business Manager
Trenton, N.J.

RE: NAME: Joseph Rinaldi (Rah) NO: 36833 COUNTY: Essex

We have been notified that the prisoner's appeal for relief from his sentence has been denied.

Pursuant to NJS 2A: 157-18 Kindly withold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $215. (Invoice attached).

DONALD C. THOMS
Sr. Classification Officer

(Signed-per M. Rively)

DCT:ks
CC:Inmate

[fol. 12]

[Affidavit as to Complaint and Service Omitted in Printing]

[fol. 13]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANT LERNER—
Filed February 18, 1964

The defendant HARRY LERNER, Essex County Treasurer, by way of Answer to the Complaint of plaintiff says that:

1. The defendant, Harry Lerner, admits that the plaintiff is now and has been an inmate of the New Jersey State Prison, confined to the Rahway Prison Farm.
2. The defendant, Harry Lerner, denies paragraph 2 of the Complaint of the Plaintiff.
3. The defendant, Harry Lerner, admits that plaintiff appealed from his conviction to the New Jersey Superior Court, Appellate Division, and that said appeal was denied.
4. The defendant, Harry Lerner, admits that pursuant to N.J.S.A. 2A:152-18, he notified the institutional authorities of the New Jersey State Prison, to reimburse the County of Essex in the amount of $215.00.
5. The defendant, Harry Lerner, denies each and every other allegation of the Complaint.

[fol. 14]

FIRST SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted, against defendant, Harry Lerner.

SECOND SEPARATE DEFENSE

The act or acts done by the defendant, Harry Lerner, which are complained of by plaintiff in his complaint,

were done by him in his official capacity as Treasurer of the County of Essex, and were done in full compliance with law.

THIRD SEPARATE DEFENSE

Pursuant to 28 U.S.C.A. 2281, this court has no jurisdiction over the subject matter of this action.

FOURTH SEPARATE DEFENSE

Defendant, Harry Lerner, denies that the issues in this cause are proper or substantial questions arising under the constitutions and laws of the United States.

/s/ Nicholas T. Fernicola,
Essex County Counsel,
Attorney for defendant,
Harry Lerner, Essex County
Treasurer

DATED: February 17, 1964

[fol. 14a]

[Acknowledgement of Service (Omitted in Printing)]

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANTS YEAGER AND DEMPSKY—
Filed February 18, 1964

The defendants, Howard Yeager, Warden of New Jersey State Prison, and A. L. Dempsky, Business Manager of New Jersey State Prison, by way of answer to the complaint of plaintiff say that:

FIRST DEFENSE

1. Defendants admit that:

(a) The plaintiff is now and has been an inmate of the New Jersey State Prison, confined to the Rahway Prison Farm;

(b) That plaintiff appealed from his conviction to the New Jersey Superior Court, Appellate Division;

(c) That plaintiff's said appeal to said court was denied;

(d) That pursuant to N.J.S.A. 2A:152-18, upon notice from the Essex County Treasurer, defendants notified plaintiff that his institutional earnings would be withheld to reimburse the County Treasurer in the amount of 215.00.

2. Defendants deny each and every other allegation contained in the complaint.

SECOND DEFENSE

The complaint fails to state a claim against these defendants upon which relief can be granted.

[fol. 16] THIRD DEFENSE

The act or acts done by these defendants, which are complained of by plaintiff in his complaint, were done by them in their official capacity as State officers and were done in compliance with law.

FOURTH DEFENSE

This court has no jurisdiction over the subject matter of this action for the reason that the relief sought by plaintiff should not be granted unless heard and determined by a three judge court as required by 28 U.S.C.A. 2281.

FIFTH DEFENSE

Defendants deny that the matters in controversy in this action are proper or substantial questions arising under the Constitution and laws of the United States.

ARTHUR J. SILLS, ESQ.
Attorney General of New Jersey
Attorney for Defendants
HOWARD YEAGER, Warden and
A. L. DEMPSKY, Business Manager.

By: /s/ Eugene T. Urbaniak, Esq.
Deputy Attorney General
of Counsel
135 West Hanover Street
Trenton, New Jersey

DATED: February 5, 1964.

[fol. 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

PLAINTIFF'S NOTICE OF AND MOTION FOR SUMMARY JUDGMENT—Filed June 29, 1964

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

Attention: Eugene T. Urbaniak, Esquire
Deputy Attorney General

NICHOLAS T. FERNICOLA, ESQUIRE
Essex County Counsel
Hall of Records
Newark, New Jersey

Attention: Louis M. Turco, Esquire

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for plaintiff, will move the United States District Court, Newark, New Jersey, on the 14th day of September, 1964, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment in plaintiff's favor for the relief demanded in the Complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law;

If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, then plaintiff will move the Court, [fol. 18] at the hearing on the motion, to ascertain what material facts are actually and in good faith controverted,

and to make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

In support of this motion plaintiff will rely upon a Stipulation of Facts which will be submitted, agreed to by all parties, and upon such briefs and affidavits as may be filed.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed September 1, 1964

JOSEPH A. RINALDI, of full age, being duly sworn, according to law upon his oath deposes and says:

1. I am the plaintiff in this case and am personally familiar with the matters related in this affidavit. I submit this affidavit in support of plaintiff's motion for Summary Judgment. This affidavit supplements some of the matters covered in the Stipulation of Facts filed in support of this motion.

2. Subsequent to my May, 1960, conviction in the Essex County Court before Judge Ferdinand D. Masucci, my petitions to prosecute an appeal *in forma pauperis* and for a transcript of the testimony and proceedings in the trial Court, were granted. (See Stipulation of Facts.) In November, 1960, I received a copy of that transcript. In December, 1960, while I was in the Essex County Court House testifying as a witness in another matter, I returned that transcript to an appropriate person. I re-

turned that transcript because I had been advised in November, 1960, by the office of the Essex County Clerk [fol. 20] that the law allowed me to retain the transcript for a period of only 30 days.

3. Thereafter, I received a letter dated July 10, 1961, from the Essex County Clerk's office (Ex. A, attached) which advised me to return the transcript in question to that office. That letter stated that:

> "The law allows you to retain this transcript for a period of 30 days only, as stated in the November letter."

I replied to that letter by letter of July 14, 1961, (Ex. B, attached). That letter advised the Essex County Clerk's office that I had returned the transcript in December, 1960, while at the Essex County Court House and that I had been advised by the person to whom I had given that transcript that he would be sure that it would be returned to the correct office.

/s/ Joseph A. Rinaldi
JOSEPH A. RINALDI

Sworn and subscribed
to before me this
day of 28th, August, 1964.

/s/ Herman Jones—#6645
Notary Public of New Jersey
My Commission Expires 5-31-69

[fol. 21] EXHIBIT "A" TO AFFIDAVIT

[SEAL]

ESSEX COUNTY CLERK'S OFFICE
HALL OF RECORDS
Newark 2, New Jersey

NICHOLAS V. CAPUTO
County Clerk

July 10, 1961

Joseph R. Rinaldi
No. 36833
Lock Bag R
Rahway, New Jersey

Re: State of N. J. vs
Joseph Rinaldi

Dear Sir:

It has come to our attention that on November 22, 1960 we sent to you the carbon copy of the transcript of testimony No. 250 filed November 10, 1960 in the above matter, at your request. The law allows you to retain this transcript for a period of thirty days only, as stated in the November letter.

You have not returned the transcript to this office to date and we would appreciate your returning it immediately. Please see that the transcript is returned at once. Thank you.

Very truly yours,

/s/ Nicholas V. Caputo
NICHOLAS V. CAPUTO
County Clerk

eds.

NVC/eds

[fol. 22] EXHIBIT "B" TO AFFIDAVIT

7/14/61

Joseph Rinaldi
Joseph Rinaldi

Business
36833

Mr. Nicholas V. Caputo Esq.
Essex County Clerk's Office
Essex County Court House
Newark, New Jersey

Joseph Rinaldi
Rahway Prison Farm
Rahway, New Jersey

Dear Sir:

I am writing you in regards to your letter dated July 10, 1961. At this time I would like to inform you that I have returned the Transcript, No. 250- to your office personaly in the month of December, 1960.

At that time I was a witness for a defendant on trial in Judge Conklins court, and I returned the said transcript to the sheriffs office where I was being held. I believe it was the third floor. The Chief there said he would make sure your office received the same.

I hope I have not put you through any inconvenience. Hoping that this will answer your letter in question, I remain,

Very Truly Yours,

JOSEPH A. RINALDI

Enc: Fl. #2

[fol. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

REQUEST FOR ADMISSION OF FACTS FROM DEFENDANTS YEAGER AND DEMPSKY—Filed September 3, 1964

TO: EUGENE T. URBANIAK, ESQ.
Attorney for Defendants Yeager
and Dempsky
Deputy Attorney General
State House Annex
Trenton, New Jersey

SIR:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 36, plaintiff requests defendants Yeager and Dempsky, within 10 days after service of this request, to admit for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed, the truth of the following facts:

1. (a) That at a time subsequent to September 1958 Kenneth Hall was tried and convicted of a crime in the Bergen County Court.

(b) That Kenneth Hall appealed this conviction to the Superior Court, Appellate Division (Docket No. A-853-61).

(c) That Kenneth Hall petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition.

[fol. 24] (e) That Kenneth Hall's conviction was affirmed by the Appellate Division (Mandate on Affirmance of May 15, 1963).

(f) That, as of this date, there has been no garnishment of Kenneth Hall's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Kenneth Hall is now an inmate at the New Jersey State Prison pursuant to the aforesaid Bergen County Court conviction.

2. (a) That at a time subsequent to September 1958 Eugene Brett was tried and convicted of a crime in the Bergen County Court.

(b) That Eugene Brett appealed this conviction to the Superior Court, Appellate Division (Docket No. AM-89-61 and A-1029-61).

(c) That Eugene Brett petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of November 19, 1962.

(e) That Eugene Brett's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 19, 1963).

(f) That, as of this date, there has been no garnishment of Eugene Brett's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

[fol. 25] (g) That Eugene Brett is now an inmate at the New Jersey State Prison pursuant to the aforesaid Bergen County Court conviction.

3. (a) That at a time subsequent to September 1958 Harold Sharpe was tried and convicted of a crime in the Atlantic County Court.

(b) That Harold Sharpe appealed this conviction to the Superior Court, Appellate Division (Docket No. AM-244-59 and A-121-60).

(c) That Harold Sharpe petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the

transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of December 28, 1960.

(e) That Harold Sharpe's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 29, 1961).

(f) That no garnishment of Harold Sharpe's institutional wages, pursuant to N.J.S. 2A:152-18, was made to defray the expense of securing the transcript while he was an inmate in the New Jersey State Prison serving the sentence imposed as a result of the aforesaid Bergen County Court conviction.

(g) That Harold Sharpe has been released from the New Jersey State Prison, having completed the term of imprisonment which he was required to serve as a result of the aforesaid Atlantic County Court conviction.

[fol. 26] 4. (a) That at a time subsequent to September 1958 Henry Giannone was tried and convicted of a crime in the Passaic County Court.

(b) That Henry Giannone appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-73-59, A-507-59 and A-508-59.

(c) That Henry Giannone petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of October 20, 1960.

(e) That Henry Giannone's conviction was affirmed by the Appellate Division (Mandate on Affirmance of June 8, 1961).

(f) That, as of this date, there has been no garnishment of Henry Giannone's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Henry Giannone is now an inmate at the New Jersey State Prison pursuant to the aforesaid Passaic County Court conviction.

5. (a) That at a time subsequent to September 1958 Ronald Walsh was tried and convicted of a crime in the Morris County Court.

(b) That Ronald Walsh appealed this conviction to the Superior Court, Appellate Division.

(c) That Ronald Walsh petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

[fol. 27] (d) That the Appellate Division granted that petition by Order of February 23, 1962.

(e) That Ronald Walsh's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 17, 1962).

(f) That, as of this date, there has been no garnishment of Ronald Walsh's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Ronald Walsh is now an inmate at the New Jersey State Prison pursuant to the aforesaid Morris County Court conviction.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

DATED: September 1, 1964.

[fol. 28]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

REQUEST FOR ADMISSION OF FACTS FROM DEFENDANT LERNER—Filed September 3, 1964

TO: LOUIS M. TURCO, ESQ.
Attorney for Defendant Lerner
Office of Essex County Counsel
Hall of Records
Newark, New Jersey

SIR:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 36, plaintiff requests defendant Harry Lerner, within 10 days after service of this request, to admit for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed, the truth of the following facts:

1. (a) That at a time subsequent to September 1958 Wilbert W. Johnson was tried and convicted of a crime in the Essex County Court.

(b) That Wilbert W. Johnson appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-242-60 and A-158-61).

(c) That Wilbert W. Johnson petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of January 23, 1962.

[fol. 29] (e) That Wilbert W. Johnson's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 24, 1962).

(f) That, as of this date, there has been no garnishment of Wilbert W. Johnson's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Wilbert W. Johnson is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

2. (a) That at a time subsequent to September 1958 Thomas Hodgson was tried and convicted of a crime in the Essex County Court.

(b) That Thomas Hodgson appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-124-59 and A-615-59).

(c) That Thomas Hodgson petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of November 14, 1960.

(e) That Thomas Hodgson's conviction was affirmed by the Appellate Division (Mandate on Affirmance of October 14, 1963).

(f) That, as of this date, there has been no garnishment of Thomas Hodgson's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

[fol. 30] (g) That Thomas Hodgson is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

3. (a) That at a time subsequent to September 1958 Elijah Coleman was tried and convicted of a crime in the Essex County Court.

(b) That Elijah Coleman appealed this conviction to the Superior Court, Appellate Division (Docket Nos. AM-176-60 and A-594-60).

(c) That Elijah Coleman petitioned the Appellate Division, pursuant to N.J.S. 2A:152-17, for a copy of the transcript of the record, testimony and proceedings at his trial.

(d) That the Appellate Division granted that petition by Order of September 29, 1961.

(e) That Elijah Coleman's conviction was affirmed by the Appellate Division (Mandate on Affirmance of February 27, 1963).

(f) That, as of this date, there has been no garnishment of Elijah Coleman's institutional wages to defray the expense of procuring the said transcript, pursuant to N.J.S. 2A:152-18.

(g) That Elijah Coleman is now an inmate at the New Jersey State Prison pursuant to the aforesaid Essex County Court conviction.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

DATED: September 1, 1964.

[fol. 31]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action, File No. 70-64

[File Endorsement Omitted]

[Title Omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT LERNER AND ANSWERS THERETO—Filed September 14, 1964

TO: NICHOLAS T. FERNICOLA, ESQ.
Essex County Counsel
Attorney for Defendant Harry Lerner
Hall of Records
Newark, New Jersey

SIR:

PLEASE TAKE NOTICE that the plaintiff demands that defendant Harry Lerner furnish answers to the following Interrogatories within the time prescribed by law:

1. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

Parties to this action and any others who may be discovered in our continuing investigation.

2. State the names and addresses of any and all proposed expert witnesses, and areas in which they are expert.

None proposed at this time.

[fol. 32] 3. If it is claimed that plaintiff, any of his agents, servants, employees, or attorneys have made any admissions concerning the subject matter of this action, state whether the same are in writing or not, and if so attach copies hereto. In lieu thereof, or if the admissions were not in writing, state the date or dates upon which made, and furnish the names and addresses of all persons by whom and to whom made, the places where made and the substance thereof.

None known at this time.

4. What is your version of how the incidents alleged in the Complaint occurred?

Plaintiff's appeal of his conviction was denied by the Appellate Division of the N. J. Superior Court. The Essex County Treasurer filed a notice with the Business Manager of the State Prison to withhold plaintiff's earnings to reimburse the Treasurer in the amount of $215.00 for the transcript of the trial below, pursuant to N.J.S.A. 2A:152-17 and 2A:152-18.

5. State the facts upon which defendant Lerner relies for his First Defense, i. e., the Complaint fails to state a claim upon which relief can be granted.

Plaintiff has failed to show that his constitutional rights have been violated, and he has not shown any additional facts for which he could obtain relief.

[fol. 33] 6. State the facts upon which defendant Lerner relies for his Second Defense, i. e., that the act or acts done by defendant Lerner were done in his official capac-

ity as Treasurer of Essex County and were done in full compliance with law.

Defendant Harry Lerner was Essex County Treasurer and his action complained of in the complaint were in compliance with N.J.S.A. 2A:152-17 and N.J.S.A. 2A:152-18.

7. State the facts upon which defendant Lerner relies for his Third Defense, i. e., that this Court has no jurisdiction over the subject matter of this action.

Plaintiff seeks a temporary injunction against the execution of the aforementioned statutes, and a Declaratory Judgment.

8. State the facts upon which defendant Lerner relies for his Fourth Defense, i. e., that the issues in this cause are not proper or substantial questions arising under the Constitution and Laws of the United States.

The aforesaid state statutes are not in violation of any Constitutional right of plaintiff. Plaintiff's claim is frivolous.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 34]

[*Duly sworn to by Harry Lerner, jurat omitted in printing (all in italics)*]

[fol. 35]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANTS YEAGER AND DEMPSKY AND ANSWERS THERETO.—Filed September 14, 1964

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

ATTN: EUGENE T. URBANIAK, ESQUIRE
Deputy Attorney General

SIR:

PLEASE TAKE NOTICE that plaintiff demands that defendants, Howard Yeager and A. L. Dempsky, furnish answers to the following Interrogatories within the time prescribed by law.

1. State the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

Joseph A. Rinaldi, c/o New Jersey State Prison, Howard Yeager, New Jersey State Prison, A.L. Dempsky, New Jersey State Prison, Harry Lerner, Treasurer, Essex County Court House, Madeline Rively, New Jersey State Prison, Justices of New Jersey Superior Court, Appellate Division, Trenton, New Jersey, Members of Essex County Prosecutor's staff, Newark, New Jersey, Essex County Clerk, Newark, New Jersey.

2. State the names and addresses of any and all proposed expert witnesses, and areas in which they are expert.

None proposed at this time.

[fol. 36] 3. If it is claimed that plaintiff, any of his agents, servants, employees, or attorneys have made any admissions concerning the subject matter of this action, state whether the same are in writng or not, and if so, attach copies hereto. In lieu, thereof, or if the admissions were not in writing, state the date or dates upon which made, and furnish the names and addresses of all persons by whom and to whom made, the places where made and the substance thereof.

None known at this time.

4. What is your version of how the incidents alleged in the Complaint occurred.

Plaintiff, an inmate confined in New Jersey State Prison, applied for a copy of the transcript of testimony taken at his trial in order to appeal, pursuant to N.J.S.A. 2A:152-17. The plaintiff's application for relief was denied by the New Jersey Appellate Division. The Essex County Treasurer filed a notice of payment with the New Jersey State Prison of $215.00, and the New Jersey State Prison Business Manager commenced to withhold plaintiff's institutional earnings to reimburse the County Treasurer in said sum, pursuant to the statute.

5. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Second Defense, i.e., the Complaint fails to state a claim upon which relief can be granted.

No rights secured to plaintiff by the U.S. Constitution and federal statutes have been violated.

[fol. 37] 6. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Third Defense, i.e., that the act or acts done by these defendants, complained of by plaintiff in his Complaint, were done in their official capacity as State officers and were done in compliance with the law.

Howard Yeager and A.L. Dempsky were, respectively, Warden and Business Manager of New Jersey State Prison at the time complained of in the complaint and N.J.S.A. 2A:152-17 and N.J.S.A. 2A:152-18 were in ef-

fect at said time, and they acted in compliance with said laws.

7. State the facts upon which defendants Howard Yeager and A.L. Dempsky rely for their Fourth Defense, i.e., that this Court has no jurisdiction over the subject matter of this action for the reason that the relief sought by plaintiff should not be granted unless heard and determined by a three Judge Court as required by 28 U.S.C.A. 2281.

Plaintiff's complaint asks that the enforcement of N.J.S.A. 2A:152-17 et seq., be restrained by restraining defendants in the enforcement or execution of such statute by an injunction pro tempore, and later, a declaratory judgment.

8. State the facts upon which refendants Howard Yeager and A.L. Dempsky rely for their Fifth Defense, i.e., that the matters in controversy in this action are not proper or substantial questions arising under the Constitution and laws of the United States.

There is no federal law providing that an inmate may not be required to pay, from his institutional earnings for the expense incurred in preparing a transcript for him for an appeal by him as was done by plaintiff herein; and the matters in controversy involve a claim devoid of merit and frivolous.

/s/ Frederick B. Lacey
Attorney for Plaintiff

[fol. 38]

[*Duly sworn to by Howard Yeager and A.L. Dempsky, jurat omitted in printing (all in italics)*]

[fol. 39]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

ANSWERS OF DEFENDANT LERNER TO REQUEST FOR ADMISSION OF FACTS—Filed September 15, 1964

The defendant, HARRY LERNER, Essex County Treasurer, by way of Answers to Request for Admission of Facts says that:

1. Defendant, HARRY LERNER, admits all the allegations under paragraph one.

2. Defendant, HARRY LERNER, admits (a), (b), (c), (d), (e) and (f) under paragraph two, adding that of this date an appeal is pending before the N. J. Supreme Court.

3. Defendant, HARRY LERNER, admits (a), (b), (c), (d), (e), (f) and (g) under paragraph three, adding that of this date, there is presently pending an action for post-conviction relief.

NICHOLAS T. FERNICOLA
Attorney for Defendant,
Harry Lerner

By /s/ Louis M. Turco
LOUIS M. TURCO
Assistant to the County Counsel

Dated: September 14, 1964

[fol. 40]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[File Endorsement Omitted]

ANSWERS OF DEFENDANTS YEAGER AND DEMPSKY TO PLAINTIFF'S REQUESTS FOR ADMISSION OF FACTS—
Original Filed October 21, 1964

STATE OF NEW JERSEY
NEW JERSEY STATE PRISON
Trenton 6, N. J.

September 24, 1964

Mr. Eugene T. Urbaniak,
Deputy Attorney General,
Department Institutions and Agencies,
State Office Building

RE: Jos. A. Rinaldi vs. Howard Yeager

Dear Mr. Urbaniak:

In reply to your letter of September 11, 1964, concerning the above matter, the following information is hereby submitted:

Kenneth Hall, #39192, received transcript and invoice for $170.00 from Bergen County. We wrote to the County authorities on 8-13-62 concerning disposition on said transcript, no reply or order was received.

Eugene Britt, #39193, received transcript from Bergen County, no invoice, reply, or order was ever submitted to this office.

Harold Sharpe, #37890, paroled on 12-10-63, transcript and invoice for $284.25 was received from Atlantic County. We wrote the County authorities on 4-5-61 concerning same, no reply received.

Harry Giannone, #37278, transcript and invoice for $695.00 from Passaic County was received. No further information or disposition submitted.

Ronald Walsh, #38338, transcript received from Morris County. No invoice or disposition submitted.

Very truly yours,

/s/ H. Yeager
H. YEAGER
Principal Keeper

HY:hem
cc: Mr. Reynolds
Records Section

[fol. 41]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil 70-64

[Title Omitted]

CLERK'S CERTIFICATE

I, Michael Keller, Jr., Clerk of the United States District Court for the District of New Jersey, do hereby certify that the paper transmitted herewith and enumerated below is an exact duplicate of the original paper on file in this office, and comprises the supplemental record on appeal in the above-entitled matter.

Copy of docketed paper

27. Answers of Defendants' Yeager and Dempsky to plaintiff's Requests for Admission of Facts.

In Witness Whereof, I have hereto subscribed my name and affixed the seal of said Court, at Newark, in said District, this 14th day of February, 1966.

MICHAEL KELLER, JR., Clerk

By /s/ Vera A. Alexander
Deputy Clerk

* * * *

[fol. 42]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

STIPULATION OF FACTS—Filed September 24, 1964

The within Stipulation of Facts is agreed to by counsel for all parties. It is presented to the Court for purposes of determining plaintiff's motion for summary judgment.

This is a civil action instituted by Joseph A. Rinaldi who is presently confined as an inmate at the New Jersey State Prison. Plaintiff is confined there as a result of two separate convictions: the first conviction was in 1959; the second was in 1960.

The first conviction was in May 1959 in the Essex County Court before Judge Joseph G. Lyons. Plaintiff was sentenced to an aggregate term of 8 to 10 years imprisonment. This sentence was composed of a 6 to 7-years sentence on the first count of the indictment and a 2 to 3-year sentence on the second and third counts. The sentences were to run concurrently.

Plaintiff petitioned the Superior Court, Appellate Division, for leave to prosecute an appeal *in forma pauperis*. This petition was granted. Plaintiff then petitioned the Appellate Division for a transcript of the testimony and proceedings in the trial court. By Order of December [fol. 43] 14, 1959 (Exhibit A), that petition was granted. On July 13, 1959, plaintiff had signed a State Prison form which stated that he had been informed on that day that:

> ". . . should I obtain a copy of the transcript of my case and lose my appeal I shall, as provided in N.J.S. 2A:157-18, be obliged to pay for the transcript by having all of my institutional earnings withheld until that debt is paid."

A copy of this form is attached as Exhibit B.

Plaintiff's 1959 conviction was affirmed by the Appellate Division on June 17, 1960 (Docket No. A-53-59).

In May 1960, while plaintiff was serving the term of imprisonment imposed for the 1959 conviction, he was tried and convicted on new indictments in the Essex County Court before Judge Ferdinand D. Masucci. Plaintiff was sentenced to terms of imprisonment of 5 to 10 years on each of two indictments, the terms to run concurrently.

Plaintiff petitioned the Superior Court, Appellate Division, for leave to prosecute an appeal *in forma pauperis* from this conviction. On June 16, 1960, this petition was granted. He then petitioned the Appellate Division for a transcript of the testimony and proceedings in the trial court. On June 21, 1960, that petition also was granted (Exhibit C). Plaintiff later petitioned the Appellate Division for a transcript of the summations in the 1960 trial but that petition was denied by an April 1, 1961, Order (Exhibit D).

[fol. 44] Plaintiff's 1959 conviction was affirmed by the Appellate Division on September 18, 1961 (Docket No. A-787-59). Copies of the Appellate Division opinion and Mandate on Affirmance are attached as Exhibits E and F. On October 16, 1961, plaintiff petitioned the Appellate Division for a rehearing. The Appellate Division denied that petition by a February 27, 1962, Order.

On March 5, 1962, plaintiff filed his petition for certification with the New Jersey Supreme Court. The petition for certification was denied on the merits by Order of April 13, 1962. Plaintiff then petitioned the United States Supreme Court for a writ of certiorari. This petition was denied on October 8, 1962. *Rinaldi* v. *New Jersey*, 371 U.S. 847 (1962).

In August 1963, subsequent to the denial of the writ of certiorari on the 1960 conviction, the Essex County Treasurer requested the Essex County Prosecutor for a list of those inmates who had appealed as indigents and whose applications for relief had been denied. By letter of September 20, 1963 (Exhibit G), the Prosecutor's office provided the Treasurer with a list of over two dozen such inmates. The Essex County Treasurer then notified the

State Prison authorities that plaintiff's appeal for a relief from the 1960 conviction had been denied. The Classification Department of the State Prison, by a memorandum of November 11, 1963, notified the State Prison Business Manager (defendant A. L. Dempsky):

> "We have been notified that the prisoner's [Rinaldi] appeal for relief from his sentence has been denied. Pursuant to N.J.S. 2A:157-18 kindly withhold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $215 (invoice attached)."

[fol. 45] A copy of this memorandum (Exhibit H) was sent to plaintiff. Court reporter Eugene Donegan's $215.00 invoice for the transcript of the 1960 conviction is attached as Exhibit I. On January 24, 1964, plaintiff filed his Complaint in this action.

Plaintiff's institutional earnings are $.20 per day for a five-day week. Inmates imprisoned for life are paid $.33 per day. Plaintiff's full institutional earnings are now being withheld and have been withheld since about November 1963. Those wages withheld are being sent to the Essex County Treasurer to reimburse him for the $215.00 as court stenographer's bill.

/s/ Frederick B. Lacey, Esq.
Attorney for Plaintiff

ARTHUR J. SILLS, Esq.
Attorney General of New Jersey
Attorneys for Defendants
Yeager and Dempsky

By /s/ Eugene T. Urbaniak
Deputy Attorney General

NICHOLAS T. FERNICOLA, Esq.
Essex County Counsel
Attorney for Defendant Lerner

By /s/ Louis M. Turco

[fol. 46]

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

EXHIBIT "A" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket A-53-59

RECEIVE
Office of
Dec. 18, 1959
Prosecutor of Essex Court
Newark, N. J.

STATE OF NEW JERSEY

vs.

JOSEPH R. RINALDI

ON PETITION FOR TRANSCRIPT
ORDER GRANTING PETITION

This matter having been brought before the court on the petition of the defendant herein pursuant to N.J.S. 2A:152-17 for a transcript of the testimony and proceedings in the trial court and the defendant having appealed to this court and the court being satisfied that such transcript is necessary for the prosecution of the appeal and that the defendant is unable, by reason of poverty, to defray the expense of procuring the same,

It is on this 14th day of December, 1959,

ORDERED:

1. Frances C. Young be and is hereby directed to prepare an original and one first carbon copy of the transcript of entire proceedings before Judge Lyons in the Essex County Court on May 28 and June 10, 1959 and to file the two copies with the Clerk of the Court from which the appeal is taken, notifying the defendant and the State of the filing thereof, the carbon copy for the use of the defendant during the period in which he is preparing his brief and thereafter for the use of the State in accordance with R.R. 1:6-1(c);

2. The expense thereof be and is hereby certified to the Essex County Treasurer who shall pay such expense upon presentation of an appropriate voucher approved by the court;

3. The Essex County Treasurer, pursuant to N.J.S. 2A:157-18, shall file a notice of said payment and the amount thereof with the keeper or warden of N. J. State Prison, Trenton, N. J. to the end that the Treasurer shall be reimbursed from the institutional earnings of the defendant, upon the filing of an appropriate order, in the event the defendant's application for relief is denied.

For the Court:

SIDNEY GOLDMANN
S.J.A.D.

[fol. 47] EXHIBIT "B" TO STIPULATION

Date 13 Jul 59

SUBJECT: Notification to inmates of provision of N.J.S. 2A:157-18 re: payment of transcript of case obtained under the referred to Statute.

I WAS TODAY INFORMED BY /s/ Illegible (signature of employee) THAT SHOULD I OBTAIN A COPY OF THE TRANSCRIPT OF MY CASE AND LOSE MY APPEAL I SHALL, AS PROVIDED IN N.J.S. 2A:157-18, BE OBLIGED TO PAY FOR THE TRANSCRIPT BY HVING ALL OF MY INSTITUTIONAL EARNINGS WITHHELD UNTIL THE DEBT IS PAID.

Signature of Inmate X /s/ Joseph Rinaldi
Inmate's No. X 36833
Inmate's Location 1 R.

(NOTE: This form is to be forwarded to and filed in, the Admission and Records Office.)

[fol. 48]

EXHIBIT "C" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket AM-186-59

FILED
JUN 21, 1960
MD
/s/ Illegible
Clerk

STATE OF NEW JERSEY

vs.

JOSEPH R. RINALDI

ON PETITION FOR TRANSCRIPT
ORDER GRANTING PETITION

This matter having been brought before the court on the petition of the defendant herein pursuant to N.J.S. 2A:152-17 for a transcript of the testimony and proceedings in the trial court and the defendant having appealed to this court and the court being satisfied that such transcript is necessary for the prosecution of the appeal and that the defendant is unable, by reason of poverty, to defray the expense of procuring the same,

It is on this 21st day of June, 1960,

ORDERED:

1. EUGENE DONEGAN be and is hereby directed to prepare an original and one first carbon copy of the transcript of entire proceedings before Judge Masucci in the Essex County Court on March 28 to April 1 and May 5, 1960 and to file the two copies with the Clerk of the Court from which the appeal is taken, notifying the defendant and the State of the filing thereof, the carbon

copy for the use of the defendant during the period in which he is preparing his brief and thereafter for the use of the State in accordance with R.R. 1:6-1(c);

2. The expense thereof be and is hereby certified to the Essex County Treasurer who shall pay such expense upon presentation of an appropriate voucher approved by the court;

3. The Essex County Treasurer, pursuant to N.J.S. 2A:157-18, shall file a notice of said payment and the amount thereof with the keeper or warden of N.J. State Prison, Trenton, N.J. to the end that the Treasurer shall be reimbursed from the institutional earnings of the defendant, upon the filing of an appropriate order, in the event the defendant's application for relief is denied.

For the Court:

/s/ Sidney Goldmann
S.J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 49] EXHIBIT "D" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket A-787-59

STATE OF NEW JERSEY

vs.

JOSEPH RINALDI

ON PETITION FOR ADDITIONAL TRANSCRIPT
ORDER DENYING PETITION

The defendant having applied by petition, filed March 24, 1961, for a transcript of the testimony in this matter to be paid for by the County of Essex, and the Court having considered the same, it is on the 1st day of April, 1961

ORDERED that the said petition is denied.*

FOR THE COURT:

/s/ Sidney Goldmann
S.J.A.D.

FILED
APR 3, 1961
MD

/s/ Illegible
Clerk

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

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* On June 21, 1960 this Court directed that the court reporter prepare and file a free transcript. Defendant represents that the transcript was not received until January, 1961. On February 8, 1961 we granted an extension of 30 days for defendant to perfect his appeal. Defendant now claims that the transcript is incomplete because it does not include the summations of the prosecutor and defense attorney. In his petition for leave to appeal defendant nowhere suggests a ground of appeal that would require him to have the summations.

[fol. 50]

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

EXHIBIT "E" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-787-59

FILED
SEP 18, 1961
G.A.B.
/s/ Illegible
Clerk

STATE OF NEW JERSY, PLAINTIFF-RESPONDENT

vs.

JOSEPH RINALDI, DEFENDANT-APPELLANT

Submitted September 18, 1961—Decided September 18, 1961.

Mr. Joseph Rinaldi, appellant *pro se*.

Mr. Brendan T. Byrne, Essex County Prosecutor, attorney for respondent (*Mr. Martin L. Greenberg*, Special Legal Assistant Prosecutor, on the brief).

PER CURIAM

We have considered the points raised by appellant in light of the stenographic transcript and find all to be devoid of merit.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 51] EXHIBIT "F" TO STIPULATION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Appeal Docket No. A-787-59

Criminal Action on Appeal

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT

vs.

JOSEPH RINALDI, DEFENDANT-APPELLANT

MANDATE ON AFFIRMANCE

This cause having been duly argued before this Court by Joseph Rinaldi, appellant pro se, and Brendan T. Byrne, counsel for the respondent, and the Court having considered the same.

It is hereupon ordered and adjudged that the judgment of the said Essex County Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court and that the record be remitted to the Essex County Court to be there proceeded with in accordance with the rules and practice relating to that Court, consistent with the opinion of this Court.

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 18th day of September, 1961.

/s/ Illegible
Clerk of the Superior Court

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Illegible
Clerk

[fol. 52] A-787-59

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

MANDATE ON
AFFIRMANCE

FILED
SEP 18 1961
G.A.B.
/s/ Illegible
Clerk

RECEIVED

LAW DEPARTMENT

PER.....

SEP 1 1964

[fol. 53]

EXHIBIT "G" TO STIPULATION

OFFICE OF
THE COUNTY PROSECUTOR
OF ESSEX COUNTY

COURT HOUSE
NEWARK 2, N. J.

EDWARD T. BYRNE
PROSECUTOR

624-1818

September 20, 1963

Mr. Harry Lerner
Department of Finance
Hall of Records
Newark, New Jersey

Dear Mr. Lerner:

In answer to your inquiry of August 29th addressed to Prosecutor Byrne concerning the result of various appeals by indigents, so that you may collect in those cases where the application for relief has been denied, the following is a list of those defendants who sought help before the Appellate Courts of the State and were denied same:

Walter N. Davis
#36190 Richard Allen Harris
#29400 James S. Smith
#36933 Joseph R. Rinaldi
#32779 Bennie Jenkins
#36949 Acuna,
Carl Mason
37917 William Schuyler
38411 Layton & Smith
#37991 Lawrence Graham
#38353 Joseph Morton & Thomas Wigfall
#36511 Willie Selph, John H. Jones & Casper Sheppert
#38537 James Green
#38370 Lamar Harris
#36408 James Green
Walter Nerwinski
37916 Kenneth Anderson
#37911 Ernest Jordan
#39397 James Flounders
#39389 Ellis Clark and others
#39003 James Culver and Brady Howard, Jr.

Yours very truly,

Peter Murray
Peter Murray
Assistant Prosecutor

PM/dt

N. J. STATE PRISON
CLASSIFICATION DEPARTMENT

DATE: 11/13/63.

TO: Mr. A. L. Dempsky
Business Manager
Trenton, N. J.

RE: NAME: Joseph Rinaldi (Rak) NO: 36833 COUNTY: Essex

We have been notified that the prisoner's appeal for relief from his sentence has been denied.

Pursuant to NJS 2A: 157-18 kindly withhold the prisoner's institutional earnings to reimburse the County Treasurer in the amount of $15.— (Invoice attached).

DCT:ks
CC inmate

DONALD C. THOMS
Sr. Classification Officer

[fol. 54]

EXHIBIT "H" TO STIPULATION

[fol. 55]

EXHIBIT "I" TO STIPULATION

DUPLICATE INVOICE

COUNTY OF ESSEX, NEW JERSEY

349 HALL OF RECORDS, NEWARK 2, N. J.

#31833

Eugene Donegan
Claimant's Name

Department or Institution: Courts

415 Court House
Address

Newark 2, N. J.
City and State

Order Number	Contract Item Number	Date of Delivery or Service	Quantity	Purchase Price Unit	UNIT PRICE Dollars	UNIT PRICE Cents	UNIT PRICE Per	AMOUNT Dollars	AMOUNT Cents
				891 State of New Jersey v Joseph R. Rinaldi - Indictment 1758-57 1760-57 (AM 166-59)					
				To furnishing transcript of proceedings in the above matter taken before Hon. P.D. Masucci, JCC, on March 23 to April and May 8, 1960, pursuant to order of Hon. Sidney Goldman, JCAD, on application of said Joseph R. Rinaldi, DEFENDANT DEFENDANT.					
				860folios at 25 cents (2 copies)				$215	00
				A.R.D. 2/15/60 Jack R. Fitzgerald Dean					

DETACH AND RETAIN FOR YOUR FILES

TOTAL	$	
Cash Discount (Claimant Omit)	$	
Amount of claim to be paid	$	

[fol. 56]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

OPINION—February 18, 1965

Before: MCLAUGHLIN, Circuit Judge, and MEANEY and SHAW, District Judges.

/s/ McLaughlin

By MCLAUGHLIN, Circuit Judge.

This case is before us on a Stipulation of Facts on behalf of all the parties, filed September 24, 1964. From that stipulation we find the following facts.

Plaintiff is presently confined in New Jersey State Prison as the result of two separate convictions, the first in May of 1959, in which he was sentenced to an aggregate term of eight to ten years imprisonment. Plaintiff was given leave to appeal that conviction in forma pauperis. He petitioned for a transcript of the trial testimony which he was allowed. On July 13, 1959 he signed a State Prison form which stated that he had been informed that:

"* * * Should I obtain a copy of the transcript of my case and lose my appeal I shall, as provided in

N.J.S. 2:152-18, be obliged to pay for the transcript by having all of my institutional earnings withheld until that debt is paid." [1]

[fol. 57] The Appellate Division affirmed plaintiff's 1959 conviction.

In May, 1960, plaintiff was tried and convicted under two new indictments. He was sentenced to terms of imprisonment of five to ten years on each of these, the sentences to run concurrently. He was allowed to appeal

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[1] The New Jersey statute with which we are concerned is 2A:152-17, 18, 19 which read as follows:

"2A:152-17. Payment of transcripts for indigent defendants in criminal cases

"Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense. L.1956, c. 134, p. 555, § 1.

"2A:152-18. Reimbursement

"The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the transcript of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L.1956, c. 134, p. 555, § 2.

"2A:152-19. Effective date

"This act shall take effect January 1, 1957. L.1956, c. 134, p. 556, § 3."

these convictions in forma pauperis and granted a transcript of the trial testimony. The convictions were affirmed by the Appellate Division. Petition to the New Jersey Supreme Court was denied as was application for certiorari to the United States Supreme Court.

In 1963 the Essex County Treasurer notified the State Prison Authorities that plaintiff's appeal from his 1960 convictions had been denied and asked that Rinaldi's institutional earnings be withheld in order to reimburse [fol. 58] the County Treasurer in the amount of $215, the cost of the transcript. Since then plaintiff's said earnings of twenty cents a day have been withheld from Rinaldi and sent to the Essex County Treasurer in accordance with the above referred to New Jersey statute.

On February 10, 1964 plaintiff filed this suit. In it he alleges that because his institutional wages are being withheld from him and turned over to the Essex County Treasurer to help pay for the trial transcript furnished him on his second appeal, he is being subjected to cruel and unusual punishment, he is being deprived of due process of law, discriminated against and denied equal protection of the law, all in violation of his Federal Constitutional rights. The defendants answered stating that they acted in accordance with the New Jersey law, citing the statute.

Counsel for plaintiff was assigned by Judge Meaney and thereafter filed a notice of motion for summary judgment and for an injunction against State enforcement of 2A:152-18. On November 16, 1964, Chief Judge Biggs in accordance with Section 2284, Title 28, United States Code, named this three judge court for the hearing and determination of this cause. Briefs were submitted on behalf of the parties and oral argument was had on February 1, 1965.

Both sides agree that under the Stipulation of Facts plus Admissions and Answers to Interrogatories there is no disputed material fact and that the suit is properly before this court for disposition on summary judgment.

On behalf of the plaintiff it is argued that he has been [fol. 59] deprived of due process and equal protection under the Fourteenth Amendment. In addition it is urged

that the reimbursement feature of the New Jersey statute violates the Thirteenth Amendment by forcing him to help pay for his transcript through his institutional wages.

What we are concerned with is a collateral situation which arose out of plaintiff's appeal from his 1960 convictions. On that appeal he was allowed to proceed in forma pauperis, he was then furnished with a copy of the trial testimony. The appeal was fully argued in the Appellate Division of the New Jersey State Court System. The decision going against him, plaintiff's appeal was presented to the State Supreme Court. Rejected there, it was taken to the United States Supreme Court on application for certiorari which was denied. Beyond all doubt, plaintiff was provided with the untrammeled means for complete appellate review, everything "* * * accorded to all who have money enough to pay the costs in advance." Griffin v. Illinois, 351 U.S. 12, 18 (1956). Plaintiff legitimately took advantage of the means furnished by New Jersey and did obtain the full review to which he was entitled as a matter of equal justice. There is not the slightest intimation that he was hindered or hampered in any possible way as he moved forward with his appeal. He was given due process in letter and spirit. He was given the same protection available to the "rich" and the "powerful". In his situation there was no "age old problem." Griffin, supra, p. 16. Mr. Justice Black in Griffin, supra, p. 17, stressed that "Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of [fol. 60] justice in every American court.'" That central aim was achieved in the Rinaldi appeal. He stood on an equality with all people in taking his appeal and carrying it through our highest tribunal of justice, the United States Supreme Court. All of that is an accomplished fact. There is no genuine controversy before us regarding it. We are not constituted to render an advisory or academic opinion on some alleged problem that might have arisen in connection with 2A:152-18 prior to Rinaldi taking his appeal. That appeal is over and done with and nowhere within it was Rinaldi subjected to any violation

of due process or equal protection. This is not the Griffin case. This is the salutary aftermath of that litigation wherein New Jersey made certain by law that her indigent prisoners would have available record transcripts for appeal purposes. The Griffin decision settled any possible quibbling about the necessity of equipping an indigent appellant in a criminal action with an adequate trial transcript. It gives such person equal treatment under our Federal law, not preferential treatment. It is no undue burden upon litigants who are able to do so, that they pay for transcripts which they obtain. In the instance before us, New Jersey, carrying out immediately the mandate of the Supreme Court, committed itself to furnishing its indigent prisoners with transcripts on appeal. The New Jersey law provided further that after the conclusion of an appeal and if a prisoner had finally lost out and remained in custody that the particular county be reimbursed for its transcript outlay, from his prison earnings.

It is that reimbursement element which is attacked as contrary to the Thirteenth Amendment. It is described as a discriminatory condition to the right of appeal, as penalizing an indigent because he is poor, as forcing [fol. 61] the unsuccessful appellant into bondage, as against the maintenance of complete free and voluntary labor throughout the United States.

There is no mystery about the reimbursement phase before us. As we have said, this only comes into being after appellant has pursued his appeal to its finality, has been unsuccessful and is still in confinement. In those circumstances the county becomes entitled to reimbursement from his institutional earnings. Obviously the reimbursement is within his means. It is from the sum the prisoner receives that reimbursement is to be had. The statute leaves the County a wide discretion regarding the amount it deducts from the prisoner's income. There is no proof before us whether prisoners are allowed extra items, such as smoking material, free or if the ordinary means of obtaining these is with their work pay. Whatever the situation we are entirely satisfied that the statutory provision for reimbursement is no violation per se

of plaintiff's Federal Constitutional rights. The administration of the method and rate of reimbursement is rightly delegated to the reasonable discretion of the County Prison Authorities. There is no Federal cause of action made out here on the theory advanced. Plaintiff is definitely able to make installment payments for his transcript. This may inconvenience him. To perhaps numerous litigants in criminal actions on the outside paying for their transcripts may be just as inconvenient and more so. We do not see that this problem of paying within his means for his important trial record is inflicting hardship upon Rinaldi. Indeed, paying what he can towards the cost of something that was most necessary to him should be helpful to him retaining or reestablishing his self respect. In common fairness he should pay what he can. If for some good reason the entire amount of his pay is too much [fol. 62] he can request an adjustment from the Prison Authority. The reimbursement of course has no bearing whatsoever on his sentence. Burns v. Ohio, 360 U.S. 252 (1959) has no applicability to this suit. There the court clerk would not file a prisoner's appeal motion papers absent the filing fee. In this instance all plaintiff's appeal papers were filed without cost. Smith v. Bennett, 365 U.S. 708 (1961) is in the same category. There was no barrier, financial or otherwise, interposed in Rinaldi's appeal and his exercise of his fully recognized right to so appeal. The reference by plaintiff to Pollack v. Williams, 322 U.S. 1095 (1944) is founded upon the erroneous premise that under the admitted facts Rinaldi has no obligation to, within his means, reimburse the County for his trial record.

Finally, complaint is made that granting for the sake of argument that the statute is not unconstitutional, its administration is discriminatory against the plaintiff because in some instances prisoners who have been given transcripts for their appeals are not being "subjected to reimbursement". Generally speaking, the question involved is New Jersey State and County business. Objection, if any, to the manner in which the statute is administered can be made through the proper New Jersey facilities. Even as to this it is difficult to see any dis-

crimination against the plaintiff. His reimbursement has been handled in accordance with the statute. Assuming that on occasion reimbursement has not been insisted upon because of laxness or favoritism and there is no evidence of this before us, plaintiff is not being harmed, he is merely making reimbursement for his transcript in accordance with the law of New Jersey. His reimbursement is not increased one penny because what may happen in other reimbursement circumstances.

[fol. 63] Our Findings of Fact and Conclusions of Law clearly appear in this opinion and therefore will not be listed separately.

This litigation has been most competently prepared and presented by both sides. The court is particularly grateful to Frederick B. Lacey, Esq., assigned counsel for plaintiff, for his unselfish, exhaustive services on behalf of plaintiff.

The motion for summary judgment and for an injunction on behalf of plaintiff is denied. Summary judgment is granted in favor of the defendants and against the plaintiff.

[fol. 64]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

ORDER ON MOTION FOR SUMMARY JUDGMENT—
February 18, 1965

In accordance with the opinion of the court entered in this case today it is on this 18th day of February, 1965 ORDERED that plaintiff's motion for summary judgment and for an injunction be and it is hereby denied. It is FURTHER ORDERED that summary judgment is granted in favor of the defendants and against the plaintiff.

GERALD MCLAUGHLIN
Circuit Judge

THOMAS F. MEANEY
District Judge

ROBERT SHAW
District Judge

[fol. 65]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF MOTION TO CORRECT JUDGMENT—
Filed March 10, 1965

TO: ARTHUR J. SILLS, ESQUIRE
Attorney General of New Jersey
State House Annex
Trenton, New Jersey

Attention: Eugene T. Urbaniak, Esquire
Deputy Attorney General

NICHOLAS T. FERNICOLA, ESQUIRE
Essex County Counsel
Hall of Records
Newark, New Jersey

Attention: Louis M. Turco, Esquire

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for plaintiff, will move the United States District Court, Newark, New Jersey, at such time as the Court directs, for an Order, pursuant to Rule 60(b) (1) of the Federal Rules of Civil Procedure, setting aside the Summary Judgment granted in favor of the defendants and against the plaintiff on the grounds that there is a substantial controversy as to a material fact, i.e. whether the application of the reimbursement provision of N.J.S. 2A:152-18 subjects the plaintiff to the infliction of cruel and unusual punishment in violation of the Eighth Amendment.

In support of this motion, plaintiff will rely upon the attached affidavit of Frederick B. Lacey.

/s/ FREDERICK B. LACEY
FREDERICK B. LACEY
Attorney for Plaintiff

[fol. 66]

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW JERSEY)
: ss
COUNTY OF ESSEX)

RINALDI AFFIDAVIT

FREDERICK B. LACEY of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the attorney for the plaintiff and have been in charge of this litigation since its inception. I am personally familiar with the facts stated hereinafter.

2. The grounds for the Summary Judgment previously sought by plaintiff were that N.J.S. 2A:152-18 was unconstitutional *per se* and that it was being unconstitutionally administered, all in violation of the Thirteenth and Fourteenth Amendments. With the exception of one very brief reference in the brief filed by the defendant Lerner (Page 11, paragraph beginning "Secondly"), no reference was made in the briefs or in the supporting papers filed in connection with the application for Summary Judgment with respect to the fact that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on the plaintiff in violation of his rights under the Eighth Amendment. It was and is my understanding that the Eighth Amendment point could not be disposed of on Summary Judgment since there were substantial questions as to material facts about that point. Accordingly, the application for Summary Judgment was not made on Eighth Amendment grounds.

[fol. 67] 3. The Complaint filed by plaintiff *pro se* is replete with charges and allegations that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on him in violation of his Eighth Amendment rights.

4. At no time in this action did plaintiff or I, acting on plaintiff's behalf, waive the charge that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual

punishment on him. At no time did the defendants move for Summary Judgment on the entire case.

I therefore make this motion to correct the Judgment to indicate that Summary Judgment has been granted for defendants only on Thirteenth and Fourteenth Amendment questions presented in plaintiff's brief.

/s/ Frederick B. Lacey

Sworn and Subscribed to
before me this 9 day
of March, 1965.

/s/ Alice M. Madden
Notary Public

[SEAL]

[fol. 68]

[Affidavit of Service by Mail Omitted in Printing]

[fol. 69]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

* * * *

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

OPINION ON MOTION TO CORRECT JUDGMENT—
May 17, 1965

Before: McLAUGHLIN, Circuit Judge, and MEANEY and SHAW, District Judges.

/s/ McLaughlin

By McLAUGHLIN, Circuit Judge.

We have before us a motion to "correct judgment" entered in this action February 18, 1965. The reason urged for this is that plaintiff's application for summary judgment did not include his Eighth Amendment ground, namely, "* * * that the administration of N.J.S. 2A:152-18 inflicted cruel and unusual punishment on him in violation of his Eighth Amendment rights." Therefore, asserts plaintiff the summary judgment should be corrected to indicate that judgment was granted defendants only on Thirteenth and Fourteenth Amendment questions. This necessitates a thorough study of all the material before us in the litigation in order to ascertain whether plaintiff's contention is meritorious.

In Paragraph II of the complaint it is alleged:

"Plaintiff is being denied the right to Due Process of the laws and being further subject to Cruel and

Unusual punishment in violation of the Seventh, Eighth and Fourteenth Amendments of the United States Constitution and various citations of the laws of the land incorporated in the substance of this application, and to the best of Plaintiff's lay knowledge there are no other cause or pretence for this complaint."

[fol. 70] This is repeated in substance under the caption "Argument". Then appears the following:

"POINT I

"PLAINTIFF IS BEING SUBJECT TO GARNISHMENT OF HIS FULL WAGES SUFFERING THE DENIAL OF THE RIGHT TO FURTHER LITIGATION, MANY PERSONAL NEEDS, A DENIAL OF DUE PROCESS AND DISCRIMINATION.

"The Eighth Amendment of the United States Constitution; guarantees that:

'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted'.

"Plaintiff alleges and contends that due to the Garnishment *per se* he is being subject to cruel and unusual punishment, wherefore the plaintiff works to the very best of his ability doing his job and duties while confined and yet at the end of the month, when the full population of the said Institution is paid for services rendered, his (plaintiff's) pay is garnished for the payment of said transcript, which is not for the purchase of the same but only for the temporary use during the preparation of briefs on appeal. That at this time the said transcript being paid for by the plaintiff is not in his possession or use and has long ago before this date returned to the Essex County Clerk.

"Plaintiff alleges and contends that due to the unconstitutional garnishment of his hard-earned wages he is without many personal needs such as listed herein:"

The needs listed consist of paper and facilities to prepare legal actions; personal items as toilet articles, smoking and correspondence materials; law books.

Immediately after the above are the following two paragraphs:

> "Due to the small and few facts alleged *supra*, plaintiff herein is being subject to 'cruel and unusual punishment', contrary to the guarantee of the Eighth Amendment of our United States Constitution, an inherent right to all citizens of our United States of America.
>
> "The Court will find from the oral hearing of this cause that plaintiff can and will submit more parol and documentary proof of the unconstitutional acts alleged, and not to lengthen this Complaint nor burden this Honorable Court has listed the same to a minimum praying to suffice so that summons will issue to the defendant(s) and the relief in quest be granted and the defendant(s) be restrained until final decree of this Honorable Court."

[fol. 71] On page 9 of the complaint the statement is made:

> "Plaintiff praying for relief under the Eighth and Fourteenth Amendments, prays that this Honorable Courts consideration be broad and elastic in view of the treatment the plaintiff is being subjected to, for there can be no doubt that discrimination . . . denial of actions in Courts of law . . . coupled with the hard earned wages being fully and unlawfully taken from the indigent plaintiff, the provisions of both the Eighth and Fourteenth Amendments are well in scope of consideration."

The defendants' answers, inter alia, denied that "* * * the issues in this case are proper or substantial questions arising under the Constitution and laws of the United States."

Appellant's motion for summary judgment was for an order "* * * granting summary judgment in plaintiff's favor for the relief demanded in the Complaint on the

ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; * * * In support of this Motion plaintiff will rely upon a Stipulation of Facts which will be submitted, agreed to by all parties, and upon such briefs and affidavits as may be filed."

In plaintiff's brief on his motion for judgment the Introductory Statement reads:

> "This is a motion for summary judgment made by plaintiff. In its essence the case involves an attack by plaintiff on the constitutionality of N.J.S. 2A: 152-18, and, in the alternative, an attack on the unconstitutional administration of that statute by the defendants."

The brief incorporates the Stipulation of Facts in toto. In addition thereto it notes Requests of Admission of Facts to the defendants, replies to those requested, interrogatories on behalf of plaintiff, answers thereto and a filed affidavit of plaintiff. The brief's Statement of Facts concludes:

[fol. 72] "Since there does not appear to be any disputed question as to a material fact this case is ripe for disposition on summary judgment."

The brief's first point is that the New Jersey reimbursement statute violates the Thirteenth and Fourteenth Amendments.[1] While the Eighth Amendment is not specifically named, the alleged cruel and unusual punishment set out in the complaint is gone into carefully in connection with the Thirteenth and Fourteenth Amendment arguments. The brief asserts that "The thrust of the reimbursement statute is that an indigent defendant appeals at his own peril. If, for any reason, the relief he seeks from the appellate court is denied he delivers himself into bondage. By exercising his right to appeal he must deprive himself of institutional wages during the term of his imprisonment if his appeal fails. In this

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[1] We have found no mention of the Thirteenth Amendment in the complaint.

respect he is discriminated against in favor of: (1) the unsuccessful non-indigent appellant who continues to draw his institutional wages; (2) the unsuccessful indigent appellant who has been released from prison before reimbursement is sought against him (see Reguests for Admission 3 (f) and (g) addressed to the Attorney General; (3) an indigent convicted of a capital offense, whose transcript the State provides free of charge (N.J.S. 2A: 152-18 does not apply to that type of indigent); (4) the successful indigent appellant.[1] The conclusion that the indigent has been deprived of due process and equal protection is reinforced by the undeniable fact that New Jersey has attempted to impose a discriminatory con- [fol. 73] dition on an indigent's right to appeal. That this condition does not become effective until after the conviction is affirmed does not distinguish it from the discriminatory conditions already stricken by the Supreme Court. The condition is discriminatory: that is all that is required in this genre of cases to establish a Fourteenth Amedment violation. Rinaldi's poverty obliged him to invoke the N.J.S. 2A:152-17 procedure in order to exercise his right to a full appellate review. The action of the State in now withholding his wages penalizes him simply because he is poor—this must be characterized as constitutionally discriminatory. Footnote 1. The successful indigent appellant can be favored even over the successful non-indigent appellant who pays for the transcript himself. The Appellate Division is free *not* to tax the State the cost of the non-indigent's transcript after a reversal of a conviction. R.R. 1:9-2 (1); 2:9-2."

The brief goes on to stress that "In effect then, the fruits of his (plaintiff's) labor for the next several years do not belong to him." And while it argues under the Thirteenth Amendment it states substantially plaintiff's main complaint under the Eighth Amendment i.e. "To take all of plaintiff's wages to pay a bill which he is not legally obliged to pay, and to keep him at work against his will and over his protests against this 'wage assignment' violates the letter and spirit of this Amendment." The brief concludes by urging that the fact that other inmates have not been obliged to reimburse Essex

County for transcripts furnished "amounts to the clearest type of discrimination" against Rinaldi. The latter in [fol. 74] his complaint cites this as an offense against him in violation of the Eighth Amendment.

Both the defense briefs argue against the Eighth Amendment alleged violations of the complaint. The state brief does this under one general heading that the New Jersey law does not violate the United States Constitution. The county brief categorically answers plaintiff's Eighth Amendment charges in Point III titled "New Jersey Statutes 2A:152-17 and 2A:152-18", concluding that they "* * * do not amount to 'cruel and unusual punishment' to the plaintiff in violation of the Eighth Amendment to the Constitution of the United States." It submits that reimbursement is not punishment at all but "* * * merely a reasonable condition imposed by the legislature to defray the costs involved to the county treasurer by a defendant choosing voluntarily to seek further relief after a conviction."

Counsel for plaintiff at oral argument of plaintiff's motion for summary judgment stated that "* * * this is a motion for summary judgment on behalf of Joseph Rinaldi against Howard Yeager, as the Warden * * *. The basis and fundamental facts have been agreed upon and have been submitted to the court prior to today in a stipulation of facts." The primary proposition presented on behalf of appellant was the fact that after appeal or appeals if the decision or decisions were finally against appellant and if he were still in prison his prison earnings could be applied against the cost of the trial and hearing transcripts furnished him. Fundamentally it was urged that the governing state law "creates an inhibition, however slight, to the institution of an appeal." Counsel stated, "* * * that this statute is not applied across the board, that there are instances which we cite [fol. 75] by name of prisoners where this statute is not applied; and we say that if a statute is unconstitutional on its face or is applied in unconstitutional fashion, we are entitled to the relief we seek." Counsel further stated: "I might say this for the record: I recognize that this is a motion for summary judgment and I should

not be discussing facts but I make this statement for the record: that certain facts that are stated in the brief submitted by the County we would controvert were we to feel that facts were important at this hearing. The fact specifically that we would controvert is that the man is being given toothpaste and razor blades and the like while he is in prison." He took the position that the items named can only be had by plaintiff out of his twenty cents a day. The only other matter suggested was that whatever the underlying reason for compensating prisoners for their work, "* * * it should be permitted to stand and not be absorbed by this kind of a proceeding which I don't think dignifies the statute, the position of the State of New Jersey or Essex County." After argument on behalf of the defendants, counsel for plaintiff replied. He did not offer any new matter. Earlier he had said, "In over-simplifying, perhaps, the factual statement I don't think I have omitted anything material."

This brings us to our opinion in the case, 238 F.Supp. 960, filed February 18, 1965. On p. 961, we noted that:

> "On February 10, 1964 plaintiff filed this suit. In it he alleges that because his institutional wages are being withheld from him and turned over to the Essex County Treasurer to help pay for the trial transcript furnished him on his second appeal, he is being subjected to cruel and unusual punishment, he is being deprived of due process of law, discriminated against and denied equal protection of the law, all in violation of his Federal Constitutional rights."

[fol. 76] In the opinion we examined at length the reimbursement which is the sole reason for this suit. Under the admitted facts we held (p. 962) that Rinaldi on his appeals was given "equal justice", "due process in letter and spirit", "the same protection available to the 'rich' and the 'powerful' ". With reference to the reimbursement element we said pp. 962, 963:

> "There is no mystery about the reimbursement phase before us. As we have said, this only comes into being after appellant has pursued his appeal to its finality, has been unsuccessful and is still in

confinement. In those circumstances the county becomes entitled to reimbursement from his institutional earnings. Obviously the reimbursement is within his means. It is from the sum the prisoner receives that reimbursement is to be had. The statute leaves the County a wide discretion regarding the amount it deducts from the prisoner's income. There is no proof before us whether prisoners are allowed extra items, such as smoking material, free or if the ordinary means of obtaining these is with their work pay. Whatever the situation we are entirely satisfied that the statutory provision for reimbursement is no violation per se of plaintiff's Federal Constitutional rights. The administration of the method and rate of reimbursement is rightly delegated to the reasonable discretion of the County Prison Authorities. There is no Federal cause of action made out here on the theory advanced. Plaintiff is definitely able to make installment payments for his transcript. This may inconvenience him. To perhaps numerous litigants in criminal actions on the outside paying for their transcripts may be just as inconvenient and more so. We do not see that this problem of paying within his means for his important trial record is inflicting hardship upon Rinaldi. Indeed, paying what he can towards the cost of something that was most necessary to him should be helpful to him retaining or reestablishing his self respect. In common fairness he should pay what he can. If for some good reason the entire amount of his pay is too much he can request an adjustment from the Prison Authority. The reimbursement of course has no bearing whatsoever on his sentence."

Respecting the allegation that non enforcement of reimbursement for transcripts from other prisoners was part of the cruel and unusual punishment inflicted upon Rinaldi we said p. 963:

[fol. 77] "Generally speaking, the question involved is New Jersey State and County business. Objection, if any, to the manner in which the statute is ad-

ministered can be made through the proper New Jersey facilities. Even as to this it is difficult to see any discrimination against the plaintiff. His reimbursement has been handled in accordance with the statute. Assuming that on occasion reimbursement has not been insisted upon because of laxness or favoritism and there is no evidence of this before us, plaintiff is not being harmed, he is merely making reimbursement for his transcript in accordance with the law of New Jersey. His reimbursement is not increased one penny because of what may happen in other reimbursement circumstances."

It is self-evident from the above that all of plaintiff's allegations which he based on the Eighth Amendment were fully before this court on his motion for summary judgment, were carefully considered and just as carefully decided. There is one factual situation which is in dispute between the parties. That is whether plaintiff is given smoking material, shaving blades, toilet articles and the like by the prison authorities or must pay for them. This was covered in detail in our opinion as appears above in the second quote therefrom. The second point which may not be disputed or at least not entirely, was also disposed of in our opinion (last opinion quote above). Definitely, there is no conflict between the parties as to facts which in any way touch our decision. We might call attention in passing to the absence of assertion by plaintiff that gifts to him from the outside, if any, are at all affected by the reimbursement procedure. Among the numerous opinions supporting our holding that the administration of the New Jersey reimbursement statute in this instance is proper New Jersey state and county business, see Gurezynski v. Yeager, 339 F.2d 884 (3 Cir. 1964); United States ex rel Morris v. Radio Station W E N R, 209 F.2d 105 (2 Cir. [fol. 78] 1953); Stroud v. Swope, 187 F.2d 850, 851 (9 Cir. 1960).

We have again exhaustively considered this whole case so that there be no possible doubt regarding all problems of substance factually and legally connected with it and their rightful solution. We are satisfied that plaintiff's

attorney explored and developed every facet of plaintiff's claims and presented them to this court in clear, forceful, lawyerlike fashion.

The motion to "correct" the judgment in this suit will be denied.

[fol. 79]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-66

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

ORDER ON MOTION TO CORRECT JUDGMENT—
May 17, 1965

In accordance with the opinion of the court entered in the above motion to correct judgment in this case today, it is on this 17th day of May, 1965 ORDERED that plaintiff's said motion to correct judgment be and it is hereby denied.

/s/ Gerald McLaughlin
Circuit Judge

/s/ Thomas F. Meaney
District Judge

/s/ Robert Shaw
District Judge

[fol. 80]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 70-64

[File Endorsement Omitted]

JOSEPH A. RINALDI, PLAINTIFF

vs.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager N. J. State Prison, and HARRY LERNER, Essex County Treasurer, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 11, 1965

I. Notice is hereby given that Joseph A. Rinaldi, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the Order entered in this action on May 17, 1965, denying plaintiff's motion to correct the judgment previously entered, and from the Order entered in this action on February 18, 1965, denying plaintiff's motion for summary judgment and an injunction and granting summary judgment in favor of the defendants and against the plaintiff.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The Clerk will please prepare a transcript of the Record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint
2. Answer of Defendants Yeager and Dempsky.
3. Answer of Defendant Lerner.

[fol. 81] 4. Interrogatories Propounded by Defendants Yeager and Dempsky and Answers thereto.

5. Interrogatories Propounded by Plaintiff to Defendants Yeager and Dempsky and Answers thereto.

6. Interrogatories Propounded by Plaintiff to Defendant Lerner and Answers thereto.

7. Plaintiff's Notice of Motion for Summary Judgment.
8. Affidavit of Joseph A. Rinaldi in Support of Motion for Summary Judgment.
9. Plaintiff's Request to Defendants Yeager and Dempsky for Admission of Facts.
10. Answers of Defendants Yeager and Dempsky to those Requests for Admission of Facts.
11. Plaintiff's Request to Defendant Lerner for Admission of Facts.
12. Answers of Defendant Lerner to those Requests for Admission of Facts.
13. Stipulation of Facts.
14. Order of February 18, 1965.
15. Opinion of Court of February 18, 1965.
16. Plaintiff's Notice of Motion to Correct Judgment and Affidavit Annexed thereto.
17. Order of May 17, 1965.
18. Opinion of Court of May 17, 1965.

[fol. 82] III. The following questions are presented by this appeal:

1. Did the Court err: (a) in failing to declare that the State's enforcement of N.J.S. 2A:152-18, which permits the State to be reimbursed for the cost of the trial transcript from the institutional earnings of a person convicted of a crime, was unconstitutional as violative of the plaintiff's rights under the Eighth, Thirteenth, and Fourteenth Amendments; and (b) in failing to enjoin the enforcement of that Statute?

2. Did the Court err in failing to order that all plaintiff's institutional wages withheld under the authority of N.J.S. 2A:152-18 be returned to him, that there be no further reimbursement taken from his wages, and that the transcript in question be returned to him?

3. Did the Court err in failing to set aside the Summary Judgment entered on behalf of defendants on the ground that there was a substantial controversy as to a material fact, i.e., whether the applica-

[fol. 83] tion of N.J.S. 2A:152-18 subjects the plaintiff to the infliction of cruel and unusual punishment in violation of the Eighth Amendment?

/s/ Donald A. Robinson
Attorney for Plaintiff
570 Broad Street
Newark, New Jersey

[fol. 84]

[Proof of Service (Omitted in Printing)]

[fols. 85-86]

[Clerk's Certificate to Foregoing Transcript Omitted in Printing]

[fol. 87]

SUPREME COURT OF THE UNITED STATES

No. 537 Misc., October Term, 1965

JOSEPH A. RINALDI, APPELLANT

v.

HOWARD YEAGER, WARDEN

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—January 24, 1966

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

[fol. 88]

SUPREME COURT OF THE UNITED STATES

No. 537 Misc., October Term, 1965

JOSEPH A. RINALDI, APPELLANT

v.

HOWARD YEAGER, WARDEN

APPEAL from the United States District Court for the District of New Jersey.

ORDER NOTING PROBABLE JURISDICTION—January 24, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 940 and placed on the summary calendar.

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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

Jur. Statmt
PETITION NOT PRINTED
RESPONSE NOT PRINTED

No. 940

JOSEPH A. RINALDI,

Appellant,

vs.

HOWARD YEAGER, WARDEN, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE APPELLANT

BERNARD M. SHANLEY
Attorney for Appellant
570 Broad Street
Newark, New Jersey

On the Brief:

FREDERICK B. LACEY
DONALD A. ROBINSON
THOMAS F. CAMPION

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 940

JOSEPH A. RINALDI,

Appellant,

vs.

HOWARD YEAGER, WARDEN, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE APPELLANT

Opinions Below

The opinion of the District Court on the summary judgment motion (R52-58) is reported at 238 F. Supp. 960. The opinion of the District Court on the subsequent motion to correct the summary judgment (R63-72) is reported at 37 F.R.D. 455.

Jurisdiction

This suit was brought under Title 42, United States Code, Section 1983, by an inmate at the New Jersey State Prison to enjoin the defendants, State and County officials, from withholding his institutional wages in order to pay for the cost of a trial transcript which he used on his unsuccessful

appeal from a criminal conviction. The judgment of the three-judge District Court denying plaintiff's motion for summary judgment and an injunction, and granting summary judgment for defendants, was entered on February 18, 1965 (R59). Plaintiff's motion to set aside the summary judgment was denied on May 17, 1965 (R72). Notice of Appeal was filed in the District Court on June 11, 1965 (R73). The Jurisdictional Statement and the motion for leave to proceed *in forma pauperis* were filed on August 10, 1965. On January 24, 1966, this Court noted probable jurisdiction, transferred the case to the appellate docket, and granted the motion to proceed *in forma pauperis* (R76). The jurisdiction of the Court to review these decisions by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b).

Questions Presented

May a State constitutionally impose a financial condition upon an indigent prisoner's right to have a free transcript needed for an appeal from a criminal conviction.

If a State may impose such a condition upon indigent prisoners, may it discriminatorily impose this condition only upon some in that class.

Statutes Involved

New Jersey Laws of 1956, c. 134, pp. 555-6, secs. 1, 2, and 3 (N.J.S. 2A:152-17, 18, 19) provide as follows:

"N.J.S. 2A:152-17. *Payment of transcripts for indigent defendants in criminal cases*

Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense. L. 1956, c. 134, p. 555, §1.

"N.J.S. 2A:152-18. *Reimbursement*

The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the tran-

script of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L. 1956, c. 134, p. 555, §2.

"N.J.S. 2A:152-19. *Effective date*

This act shall take effect January 1, 1957. L. 1956, c. 134, p. 556, §3."

Statement

Appellant Joseph A. Rinaldi is presently confined as an inmate at the New Jersey State Prison as the result of two separate criminal convictions: the first in 1959; the second in 1960 (R37). The sentences imposed for those convictions amount to an aggregate term of 13 to 20 years (R37, 38).

Rinaldi appealed *in forma pauperis* from his 1960 conviction, leave to so proceed having been granted by the Appellate Division of the New Jersey Superior Court (R38). His petition for a free transcript of the testimony and proceedings in the trial court was granted by the Appellate Division by Order of June 21, 1960 (R38, 43-4). That Order directed that the cost of the transcript be paid by the Treasurer of Essex County (in which Rinaldi had been tried) and also directed (R44):

"The Essex County Treasurer, pursuant to N.J.S. 2A:157-18 (actually 2A:152-18) shall file a notice of said payment and the amount thereof with the keeper or warden of N. J. State Prison, Trenton, N. J. to the

> end that the Treasurer shall be reimbursed from the institutional earnings of the defendant, upon the filing of an appropriate order, in the event the defendant's application for relief is denied."

At the time he appealed his 1960 conviction Rinaldi was aware of the existence and impact of the New Jersey reimbursement statute (R37, 42).

Rinaldi's 1960 conviction was affirmed by the Appellate Division (R46-7). His petition to the New Jersey Supreme Court for certification was denied, as was his petition to this Court for a writ of certiorari. *Rinaldi* v. *New Jersey,* 371 U.S. 847 (1962) (R38). In November, 1963 the New Jersey State Prison began to withhold appellant's institutional wages to reimburse the Essex County Treasurer for the $215.00 cost of the 1960 transcript (R39). Since appellant's institutional wages are only 20 cents per day, or $1.00 per week (R39), it will take Rinaldi several years to pay the cost of the 1960 transcript.

In January, 1964 Rinaldi commenced this action by filing a Complaint *pro se* (R1-11). Counsel was assigned to represent him (R54) and moved for summary judgment (R17). In support of the motion, plaintiff filed certain Requests for Admissions (R22, 26) and answers thereto (R34, 35) which established that several other New Jersey State Prison inmates whose convictions had been affirmed on appeal had not had their institutional wages withheld to reimburse the Counties in question for the cost of their transcripts. Rinaldi also filed an affidavit, the facts of which were not denied by any of the defendants, that he had been allowed to keep the transcript for a period of about one month, after which he returned it to County authorities, and that the Essex

County Clerk had advised him that "the law allows you to retain this transcript for a period of thirty days only . . ." (R18-21).

Upon the summary judgment motion, Rinaldi requested: (1) that N.J.S. 2A:152-18 be declared unconstitutional as violative of the Thirteenth and Fourteenth Amendments; (2) that the transcript be returned to him; (3) that all wages withheld be returned and that no future reimbursement be made from his wages; and (4) in the event N.J.S. 2A:152-18 not be declared unconstitutional, that all wages withheld be returned and that no future reimbursement be made on the grounds that the reimbursement statute was being administered in a discriminatory fashion against him.

Chief Judge Biggs of the Third Circuit, pursuant to Title 28, United States Code, Section 2284, appointed a three-judge court to hear the matter (R54). Plaintiff's motion was denied and summary judgment was granted in favor of the defendants (R59). Thereafter, plaintiff moved to set aside the summary judgment on the grounds that there was a substantial controversy as to a material fact, i.e., whether the application of N.J.S. 2A:152-18 subjected plaintiff to cruel and unusual punishment in violation of the Eighth Amendment (R60). The same three-judge court denied that motion and this appeal was then taken (R72, 73). The thrust of both the opinions below is that Rinaldi's rights under the Eighth, Thirteenth and Fourteenth Amendments had not been violated by the existence or the administration of the reimbursement statute.

Summary of Argument

The reimbursement statute sustained by the Court below imposed a financial condition upon the indigent defendant's right to an appeal from a criminal conviction. Although this condition is somewhat sophisticated in form and is imposed in a manner somewhat different than those conditions already stricken by this Court, the statute still acts as an inhibiting agent in the area of appellate review by indigents and penalizes those indigents who seek to prosecute appeals. Moreover, even if the statute was not unconstitutional, it is being applied in a blatantly discriminatory fashion against this indigent prisoner. Not only is there discrimination in this particular case, but the very statute itself necessarily establishes invidious discrimination among various classes of prisoners.

ARGUMENT

I.

The Reimbursement Statute Imposes a Financial Condition Upon the Indigent Prisoner Which Denies Him Due Process and Equal Protection in Seeking Appellate Review.

The matter on appeal developed as a result of New Jersey's legislative response to the decision in *Griffin* v. *Illinois*, 351 U.S. 12 (1956). *Griffin* held that an indigent defendant who had been convicted of a crime had been deprived of his Fourteenth Amendment rights of due process and equal protection because of the failure of the State of Illinois to provide him with a free transcript needed for an appeal.

Prior to *Griffin*, New Jersey had already accorded the right of appeal to a defendant convicted in a criminal action. In order to obtain the desired full appellate review of trial errors, it was necessary to submit a transcript of the testimony at trial. However, with the exception of indigents sentenced to death in capital cases, all others convicted in criminal cases during that period who needed a transcript for appeal had to pay for it, whether indigent or not. *State* v. *Welch*, 46 N.J. 57, 63, 214 A.2d 857, 860 (1965). Free transcripts for those sentenced to death has been permitted by statute since 1952. L. 1952, c. 212, p. 743, sec. 2; N.J.S. 2A:152-16.

In the year following *Griffin*, New Jersey enacted N.J.S. 2A:152-17 and 18.[1] N.J.S. 2A:152-17 establishes a procedure whereby an indigent convicted of a crime can secure "a copy of the transcript of the record, testimony and proceedings at the trial" for use either at trial level or before the Appellate Division of the New Jersey Superior Court. If the judge to whom the indigent applies for a transcript is satisfied of the salient facts, he certifies the expense to the County Treasurer who then pays the stenographer's bill. N.J.S. 2A:152-18, the constitutionality of which Rinaldi challenges, deals with reimbursement by the indigent of that expense. It states:

> "The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the tran-

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[1] It has been noted that N.J.S. 2A:152-17 and 18 were enacted as the result of *Griffin*. Rossmoore and Koenigsberg, "Habeas Corpus and the Indigent Prisoner," 11 *Rutgers L. Rev.* 611, 614 (1956); Trebach, "A Modern Defender System for New Jersey," 12 *Rutgers L. Rev.* 289, 302 (1957).

> script of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court."

With the exception of the decision below, the constitutionality of this reimbursement statute does not appear to have been examined by any other court, State or Federal, at least by way of a reported opinion.[2]

While the adoption of N.J.S. 2A:152-17 evidences a legislative intent in New Jersey to follow the letter and spirit of *Griffin*, the companion reimbursement statute, N.J.S. 2A:152-18, added a condition which could only serve to discourage applications for transcripts. As was noted by the District Court in the second of the two opinions herein, one of the appellees urged that the reimbursement

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[2] Two decisions have partially reviewed N.J.S. 2A:152-17, the statute which provides for the original payment of the cost of the transcript by the county. *In re Faiola's Petition*, 185 F. Supp. 564 (D.N.J. 1960); *State* v. *Bentley*, 46 N.J. Super. 193, 134 A.2d 445 (App. Div. 1957). Those cases, however, merely indicate that the indigent cannot claim he was denied a stenographic transcript unless he attempts to secure one under the procedure established by N.J.S. 2A:152-17. In *State* v. *Welch*, 46 N.J. 57, 214 A.2d 857 (1965), the New Jersey Supreme Court reviewed a post-conviction proceeding involving an indigent who had been convicted of first degree murder in 1949 and given a life sentence. He filed a notice of appeal from the conviction but could not supply the necessary transcript because of his indigency. The appeal was dismissed. All this occurred before *Griffin* and before New Jersey's enactment of N.J.S. 2A:152-17 and 18. An adequate transcript could not be obtained now since the stenographic notes of the trial had been destroyed. The Supreme Court held the facts of that case brought it within the principles of the *Griffin* case and other subsequent decisions of this Court. The 1949 conviction was vacated and the cause remanded for a new trial.

statute is a "reasonable condition" imposed by the legislature (R68). This concern for the alleged reasonableness of the reimbursement condition permeates the opinions below and forced the District Court to adopt a narrow and restrictive reading of *Griffin*. It also led that court to overlook the fact that several post-*Griffin* decisions clearly indicate that this Court, in deciding *Griffin*, meant to open wide to indigents the door to full appellate review of their convictions without intimidating or inhibiting the indigents' election to appeal by the imposition of any financial consideration whatsoever, no matter what form that condition might take.

A brief review of *Griffin* and the holdings and opinions of this Court's salient post-*Griffin* cases is in order. The rationale underlying the *Griffin* right was expressed by this Court in the following terms:

> "Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of Magna Charta: 'To no one will we sell, to no one will we refuse, or delay, right or justice. . . . No free man shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him nor send upon him, but by the lawful judgment of his peers or by the law of the land.' These pledges were unquestionably steps toward a fairer and more nearly equal application of criminal justice. In this tradition, our own constitutional guaranties of due process and equal protection both called for procedures in criminal trials which allow no invidious discriminations between per-

sons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.' . . .

"Surely no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court. Such a law would make the constitutional promise of a fair trial a worthless thing. Notice, the right to be heard, and the right to counsel would under such circumstances be meaningless promises to the poor. In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color. Plainly the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial. . . .

"There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance. It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. . . . But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. . . .

". . . There can be no equal justice where the kind of trial a man gets depends on the amount of money he

has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." 351 U.S., at pp. 16-19.

Griffin was a direct attack on a State procedure based on a State statute. Other States whose restrictive appellate rules for indigents have been set aside by this Court since *Griffin* are Washington, Ohio, Iowa, and Indiana.

In *Eskridge* v. *Washington State Board,* 357 U.S. 214 (1958), this Court held that Washington had denied an indigent his Fourteenth Amendment right (citing *Griffin*) to have appellate review regardless of whether he could afford to pay for the trial record. The Washington procedure which was found to be constitutionally deficient was based on a state statute which allowed an indigent defendant a free transcript only if the trial judge was of the opinion "justice will thereby be promoted." Remington's Wash. Rev. Stat., 1932, §42-5. It was held that the "conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript." 357 U.S., at p. 216. Subsequent to *Eskridge,* the Washington Supreme Court promulgated a set of rules to govern the trial judges in passing on indigents' requests for free stenographic transcripts. Basically, if the trial judge found that the appeal was frivolous he could deny the indigent defendant a free transcript. In *Draper* v. *Washington,* 372 U.S. 487 (1963), this Court struck down the new procedure as violative of the Fourteenth Amendment, comparing it to the *Eskridge* procedure as "a similarly inadequate substitute for the full appellate review available to non-indigents in Washington, when the effect of that [the trial judge's]

finding is to prevent an appellate examination based upon a sufficiently complete record of the trial proceedings themselves." 372 U.S., at pp. 499-500.

In *Burns* v. *Ohio,* 360 U.S. 252 (1959), this Court reviewed the *de facto* denial by the Ohio Supreme Court of an indigent defendant's motion for leave to appeal a felony conviction to that court. The Clerk of the Ohio Supreme Court refused to file the indigent's motion papers because they were not accompanied by a $20 filing fee. This fee was required by Section 1512 of the General Code of Ohio and the Rules of Practice of the Ohio Supreme Court. The State acknowledged that the Clerk's refusal to file the indigent's motion was the equivalent of a final judgment of the highest court in Ohio. The judgment was reversed despite Ohio's argument that the ultimate disposition of any motion for leave to appeal a felony conviction was a matter of discretion for the Ohio Supreme Court, thus distinguishing *Burns* from *Griffin.* This Court rejected this argument saying that it missed "the crucial significance of *Griffin.*"

> "There is no rational basis for assuming that indigents' motions for leave to appeal will be less meritorious than those of other defendants. Indigents must, therefore, have the same opportunities to invoke the discretion of the Supreme Court of Ohio. . . .
>
> ". . . The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." 360 U.S., at pp. 257-8.

Shortly after *Burns* was decided, this Court reviewed another indigent defendant's claim that Ohio did not pro-

vide him adequate remedy for the prosecution of an appeal from his conviction, since he was required to pay docket fees to the Ohio Supreme Court. The case came to this Court on appeal from the denial of a writ of habeas corpus. This Court held, in a *per curiam* opinion, that the indigent's application for the writ made out a case of deprivation of his constitutional right to the equal protection of the laws of Ohio in respect to the state court appeal. *Douglas* v. *Green,* 363 U.S. 192 (1960).

Smith v. *Bennett,* 365 U.S. 708 (1961), is in the same general category as *Burns* and *Douglas. Smith* involved two habeas corpus cases which successfully challenged the validity, under the Equal Protection Clause of the Fourteenth Amendment, of the requirement of an Iowa Statute which obliged indigent defendants to pay a $4.00 filing fee before applications for writs of habeas corpus or the allowance of appeals in such proceedings would be docketed. This Court rejected every defense of the Iowa procedure offered by the State and ruled that the indigents had been denied equal protection. The decision is summarized in this sentence:

> "We hold that to interpose *any financial consideration* between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws." 365 U.S., at p. 709. (Emphasis supplied.)

Lane v. *Brown,* 372 U.S. 477 (1963), is one of the most recent examples of this Court's continuing policy against upholding any State procedure which might prevent or inhibit an indigent's right to a complete and non-discriminatory appeal. The defendant had been convicted of a

crime in an Indiana State Court. After his conviction was affirmed he filed a petition for a writ of error *coram nobis* in the State trial court. He was represented by the Public Defender at the hearing on that petition. The petition was denied. The defendant then requested the Public Defender to represent him in perfecting an appeal to the Indiana Supreme Court. This request was refused because of the Public Defender's stated belief that an appeal would be unsuccessful. The denial of this request had the effect of foreclosing any appeal from the denial of the petition for a writ. The filing of the transcript of the *coram nobis* hearing was required in order to confer jurisdiction upon the Indiana appellate court. State statutes, however, as interpreted by the Indiana Supreme Court, held that only the Public Defender could procure a transcript of a *coram nobis* hearing for an indigent. The upshot of this arrangement was that a person with funds could appeal the denial of a writ of error *coram nobis,* while an indigent, at the will of the Public Defender (an official appointed and paid by the State Supreme Court), was entirely cut off from any appeal. This Court held that this Indiana procedure was "constitutionally deficient" noting:

> "The present case falls clearly within the area staked out by the Court's decisions in Griffin, Burns, Smith, and Eskridge. To be sure, this case does not involve, as did Griffin, a direct appeal from a criminal conviction, but Smith makes clear that the Griffin principle also applies to state collateral proceedings, and Burns leaves no doubt that the principle applies even though the State has already provided one review on the merits.
>
> "In Eskridge the Court held constitutionally invalid a provision which permitted a trial judge to prevent

an indigent from taking an effective appeal. The provision before us confers upon a state officer outside the judicial system power to take from an indigent all hope of any appeal at all. Such a procedure, based on indigency alone, does not meet constitutional standards." 372 U.S., at pp. 484-5.[3]

The above cases all relate to review by this Court of State statutes or procedures. *Hardy* v. *United States*, 375 U.S. 277 (1964), reviewed Federal criminal court procedure relating to providing indigent defendants with free transcripts. Federal procedure, with the *Hardy* decision, had apparently completed a period of change from a state where indigents were denied free transcripts upon the trial court's certification that the appeal was not taken in good faith to one where free transcripts will be granted in virtually all indigent appeals.[4] The opinions of Justices Clark and Harlan seem to state as much. The majority opinion expressed the view of seven Justices that the indigent's attorney needed a complete trial transcript in order to determine whether "plain error" had been committed. Four Justices added a concurring opinion written by Justice

[3] The District Court herein acknowledged that: "What we are concerned with is a collateral situation which arose out of plaintiff's appeal from his 1960 convictions" (R55).

[4] The recently adopted Criminal Justice Act, Title 18, United States Code, Section 3006A, is but another example of public concern for the rights of the indigent defendant. Among other financial assistance given to the indigent, the Act provides that fees and expenses incurred by the defendant which were necessary to prepare an adequate defense may be paid from public monies appropriated to the United States Courts for this purpose. Title 18, United States Code, Section 3006A (e), (f) and (h). There is no provision in that Act requiring the defendant to reimburse the government for those fees.

Goldberg. It is submitted that the concurring opinion accurately reflects this Court's view on the free transcript question in general, and is of particular significance on this appeal even though it refers to Federal criminal cases:

> "I concur separately, however, to state my conviction that in the interests of justice this Court should require, under our supervisory power, that full transcripts be provided, without limitation, in all federal criminal cases to defendants who cannot afford to purchase them, whenever they seek to prosecute an appeal." 375 U.S., at p. 282.
>
> "I conclude, therefore, that the interests of equal justice and the viability of our adversary system are impaired when an indigent defendant's access to a trial transcript is not as complete as that of a paying defendant. This 'concept of "equal justice" does not confuse equality of treatment with identity of treatment.' It does, however, require the Government to do 'all that can reasonably be required of it to eliminate those factors that inhibit the proper and effective assertion' of the defendant's claims." 375 U.S., at pp. 290-1.

The above cases reflect a pattern and policy to condemn *any* State action which interposes a financial condition, however slight, upon an indigent's direct or indirect appeal of a criminal conviction. This condemnation has already been extended to discrimination against indigents in direct appeals (*Griffin*), habeas corpus cases (*Douglas* and *Smith*), and *coram nobis* matters (*Lane*). The fact that the financial condition may be slight does not protect it: this Court has already stricken the minuscule requirement of $4.00 and $20.00 filing fees (*Burns* and *Smith*).

In spite of the breadth and pattern found in the above decisions, the District Court chose to interpret those cases as being strictly limited to their facts and to insist that they only established a policy permitting indigents to have their appeals heard. The court below appeared satisfied that this Court's restrictions against the imposition of financial conditions on indigent appeals only applied to the actual payment of money by the indigent before the appeal could be heard. There does not appear to be any holding in *Griffin* or the other cases which justifies this limited approach. *Burns,* in fact, held: "The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." 360 U.S., at p. 258. *Smith* reiterated this policy as follows: "We hold that to interpose *any financial consideration* between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny him the equal protection of the laws." 365 U.S., at p. 709. (Emphasis supplied.)

Even if the *Griffin* series of cases had not already implicitly prohibited the imposition of New Jersey's reimbursement condition, N.J.S. 2A:152-18 must be realistically viewed for what it is and for what it does. By requiring an indigent to gamble his institutional wages in order to secure a transcript, the prisoner must weigh the risk of a reversal against the loss of all his prison wages. To what could the failure to appeal under such conditions be attributed other than fear of loss of the small financial cushion his wages provide during the term of imprisonment. This fear would be particularly felt by a person already reduced to indigency. This cannot be due process. The District Court held that the indigent's loss of prison wages "should

be helpful to him retaining or reestablishing his self respect" (R57). The court did not articulate how a person already indigent, once stripped of the twenty-cent daily wage, could then hold his head higher. Had the District Court permitted a full hearing to review the cruel and unusual punishment which the discriminatory enforcement of the reimbursement statute worked on Rinaldi, this point could have been developed in detail.

It is quite clear that the reimbursement statute amounts to nothing more than a sophisticated attempt to avoid the impact of the *Griffin* decision. The reimbursement condition which the statute attaches to the granting of a free transcript is as invidious, in its own way, as all the other financial conditions which this Court has stricken since *Griffin*. Since it denies Rinaldi due process and equal protection, N.J.S. 2A:152-18 should be stricken as unconstitutional.

II.

The Reimbursement Statute Is Discriminatory in Its Application and Is Being Applied in a Discriminatory Manner Against This Indigent Prisoner.

Even if the reimbursement statute was not unconstitutional by virtue of being a prohibited financial condition against appellate review, the very system which the statute necessarily establishes discriminates against the unsuccessful indigent appellant. Having appealed at his own peril, he finds himself discriminated against in favor of: (1) the unsuccessful non-indigent appellant who continues to draw institutional wages; (2) the unsuccessful indigent appellant who has been released from prison before reimbursement is sought against him (the State officials acknowledge

(R24, 35) that this has already occurred in the New Jersey prison system since the adoption of N.J.S. 2A:152-18); (3) an indigent convicted of a capital offense, whose transcript the State provides free of charge (N.J.S. 2A:152-18 does not apply to that type indigent); (4) the successful indigent appellant.[5]

It is clear from the record below that N.J.S. 2A:152-18 is being applied in a discriminatory fashion against Rinaldi. It was admitted below that (1) several unsuccessful indigent appellants from Essex County, where Rinaldi was convicted, are not being subjected to reimbursement (R26-28, 34); (2) several unsuccessful indigent appellants from other Counties in New Jersey are not being subjected to reimbursement (R22-25, 35-6); (3) at least one unsuccessful indigent appellant was paroled without ever having been subjected to reimbursement (R24, 35). All of these indigent prisoners received free transcripts. In its opinions below, the District Court held that the administration of the reimbursement statute is State and County business and relief should be sought "through the proper New Jersey facilities" (R57, 71). Nevertheless, the admitted discriminatory application of a state statute has deprived appellant of his civil rights and, even though a prisoner of the State, entitles him to seek relief under Title 42, United States Code, Section 1983. *Sewell* v. *Pegelow,* 291 F.2d 196 (4th Cir. 1961). Furthermore, the suggestion to seek relief through "New Jersey facilities", if this is taken to mean

---

[5] The successful indigent appellant can even be favored over the successful non-indigent appellant who pays for the transcript himself. The Appellate Division of the New Jersey Superior Court is free not to tax the State the cost of the transcript after a reversal of a conviction. R.R. 1:9-2(1) and 2:9-2 of New Jersey Court Rules.

application to State or County administrative bodies, would mean that Rinaldi can only request, not require, the government to treat him as it has treated others in his class. This would be the antithesis of due process.

As further evidence of the discrimination being practiced against Rinaldi, the record below is clear that even though the State and County officials are seeking to make Rinaldi pay for the trial transcript, pursuant to the reimbursement statute, he was only allowed to keep the transcript for about one month (R18). It would appear as if the officials administering the statute are stretching it to its breaking point.

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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No. 242

JOSEPH A. KIELAR,

Appellant,

vs.

HOWARD TEAGER YARRUM, *et al.*

Appellees.

Appeal from the United States District Court
for the District of New Jersey.

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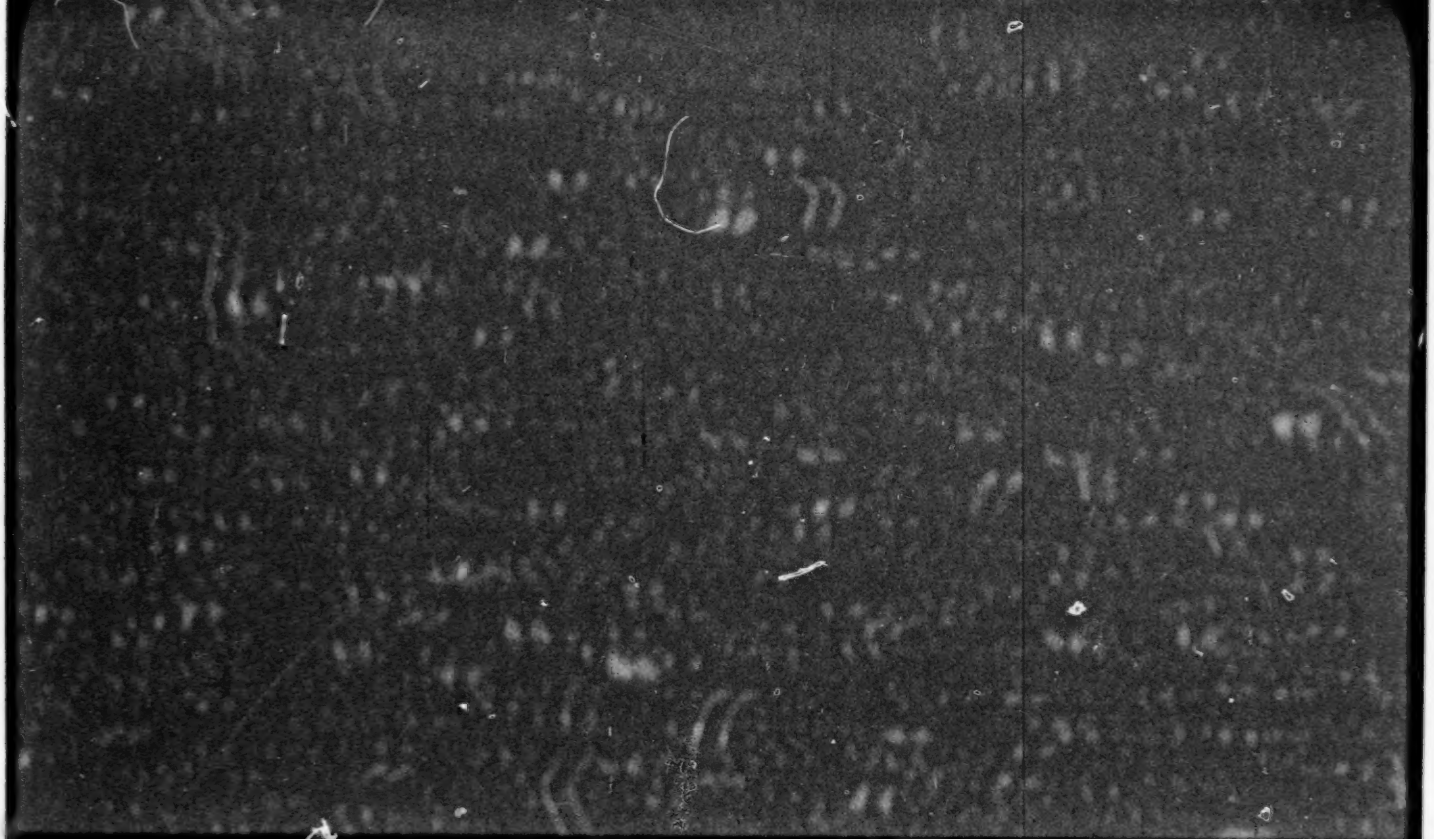

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 940

JOSEPH A. RINALDI,

Appellant,

v.

HOWARD YEAGER, Warden, A. L. DEMPSKY, Business Manager, N. J. State Prison, Trenton, N. J. and HARRY LERNER, Essex County Treasurer,

Appellees.

BRIEF FOR APPELLEES

Opinions Below

The opinions of the three-judge District Court for the District of New Jersey are reported at 238 F. Supp. 960 (R52-58) and 37 FRD 455 (R63-72).

Jurisdiction

This suit was instituted in the United States District Court for the District of New Jersey by Appellant, Joseph A. Rinaldi, an inmate at the New Jersey State Prison, under 42 U.S.C. §1983 against Appellees who are officials of the State of New Jersey and the County of Essex. The jurisdiction of this Court to review the decisions of the Court below by direct appeal is invoked under 28 U.S.C. §1253 and §2101(b).

Constitutional Provisions and Statutes Involved

There are involved in this appeal the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

There is involved New Jersey Laws 1956, c. 134, §§1, 2 and 3, referred to as N.J.S. 2A:152-17, 18 and 19, which provides as follows:

"N.J.S. 2A:152-17. *Payment of transcripts for indigent defendants in criminal cases*

Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the

amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense. L. 1956, c. 134, p. 555, §1.

"N.J.S. 2A:152-18. *Reimbursement*

The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the transcript of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court. L. 1956, c. 134, p. 555, §2.

"N.J.S. 2A:152-19. *Effective date*

This act shall take effect January 1, 1957. L. 1956, c. 134, p. 556, §3."

Questions Presented

Whether a state statute, which enables a defendant to obtain a trial transcript without cost and without delay upon a showing of indigency and that the transcript is needed to prosecute an appeal from his criminal conviction and which further provides that the costs of the transcript shall be reimbursed from any institutional earnings

of such defendant in the event his appeal is unsuccessful, constitutes a denial of Due Process and Equal Protection under the Fourteenth Amendment and deprives such person of his constitutional right to a prompt and effective criminal review in a manner substantially in accord with the right of other defendants.

Whether a state statute, which requires reimbursement from the institutional earnings of a convicted defendant for the costs of a transcript previously furnished to him free of charge for the prosecution of a criminal appeal, constitutes invidious discrimination against such defendant under the Fourteenth Amendment because other classes of criminal defendants may not be subject to such reimbursement or because it appears that a few individual defendants have not been subjected to such reimbursement where there is an absence of any indication of deliberate, selective discrimination on the part of governmental authorities.

Statement

This is an appeal from two orders of a three-judge District Court for the District of New Jersey, appointed pursuant to 28 U.S.C.A. §2284, entered on February 18, 1965, and on May 17, 1965 (R59, 72). The orders cumulatively denied appellant's motion for summary judgment that the application of the New Jersey statute, N.J.S. 2A:152-18, which required that he reimburse the costs of a transcript utilized by him in an unsuccessful appeal from his criminal conviction, constituted a denial of his constitutional rights. A notice of appeal was filed with this Court on June 11, 1965 (R73). An order granting leave to proceed *in forma pauperis* and an order noting probable jurisdiction were entered on January 24, 1966 (R76).

Appellant, Joseph A. Rinaldi, is presently confined as an inmate in the New Jersey State Prison as a result of two separate convictions in May, 1959 and May, 1960 (R37). The appellant was convicted for assault with intent to kill and sentenced on May 20, 1959 in the Essex County Court to an aggregate term of 8 to 10 years imprisonment. The sentence was composed of 6 to 7 years on the first count of the indictment and a 2 to 3-year sentence on the second and third counts. Both of these sentences were to run concurrently (R37).

Rinaldi filed a petition dated September 11, 1959 in the Superior Court, Appellate Division, for leave to prosecute an appeal *in forma pauperis*. The petition was granted on September 23, 1959. Appellant also filed a petition in the Superior Court, Appellate Division, for a transcript of the proceedings in the trial court upon a showing that he was indigent and the transcript was needed for the appeal (R37). This petition was granted by an order of court dated December 14, 1959. The order provided that "the expense [of such transcript] is hereby certified to the Essex County Treasurer who shall pay such expense upon presentation of an appropriate voucher approved by the Court." (R40). The petitioner also signed a State Prison form which stated that he had been informed, in accordance with the New Jersey statute, that should he obtain a copy of the transcript and his conviction be affirmed, his institutional earnings would be withheld until the debt was paid (R42). Appellant's May 20, 1959 conviction was affirmed by the Superior Court, Appellate Division, on June 17, 1960 (R38).

While serving the sentence imposed under the May 20, 1959 conviction, appellant was convicted of a threat to take

life on May 5, 1960 on two new indictments in the Essex County Court and sentenced to a concurrent term of 5 to 10 years on each of the two indictments (R38). On June 13, 1960 appellant petitioned for leave to appeal *in forma pauperis* from the May 5, 1960 conviction (R38). This was granted on June 16, 1960 (R38). On June 21, 1960 he petitioned for a free transcript of the proceedings in the trial court. This was granted by the Superior Court, Appellate Division, on the same day (R38, 43). The order of the Superior Court, Appellate Division, specified in language identical to the order of December 14, 1959, that the expense be defrayed by the Essex County Treasurer and that the obligation of the appellant to reimburse the Essex County Treasurer be taken out of his institutional wages in the event his appeal were denied (R43, 44).

In November, 1960 appellant received a copy of the transcript of the proceedings in the trial court in order to aid him in the prosecution of his appeal *in forma pauperis* (R18). Appellant's appeal was found devoid of merit and his 1960 conviction affirmed on September 18, 1961 (R46). On October 16, 1961, Rinaldi petitioned the Superior Court, Appellate Division, for a rehearing which was denied on February 27, 1962 (R38). On March 5, 1962, appellant filed a petition for certification to the New Jersey Supreme Court which was denied on April 13, 1962 (R38). Appellant then filed a petition for a writ of certiorari to this Court which was denied on October 8, 1962. *Rinaldi* v. *New Jersey*, 371 U. S. 847 (1962) (R38).

In August, 1963 the Essex County Treasurer requested from the Essex County Prosecutor's Office a list of inmates who had appealed as indigents pursuant to N.J.S. 2A:152-17 *et seq.* and whose applications for relief had

been denied (R38). The names of 26 such inmates, including the appellant, were furnished on September 20, 1963 (R49). This information was supplied to enable the County Treasurer to collect the costs of transcripts used by the unsuccessful indigent defendants (R49). The Essex County Treasurer notified the State Prison authorities that the appellant's appeal for relief had been denied (R39). On November 13, 1963, a directive was issued by the State Prison authorities to withhold the institutional earnings of appellant in the amount of $215 to reimburse the Essex County Treasurer for the transcript ordered by the Superior Court, Appellate Division, on June 21, 1960 (R50).[1] The appellant was apprised that the payment for the transcript used in preparing his appeal *in forma pauperis* granted on June 16, 1960 would be deducted from his institutional wages and forwarded to the Essex County Treasurer (R39, 50).

On January 24, 1964 the appellant filed *pro se* a complaint in the United States District Court for the District of New Jersey for a declaratory judgment rendering N.J.S. 2A:152-18 unconstitutional and for injunctive relief to restrain Howard Yeager, Warden of the New Jersey State Prison, A. L. Dempsky, Business Manager of the New Jersey State Prison, and Harry Lerner, Essex County Treasurer, from deducting and receiving reimbursement for the

[1] There is nothing to indicate that the Essex County Treasurer requested reimbursement, or that the State Prison authorities required reimbursement, from the appellant's institutional wages to pay for the costs incurred by the County in furnishing the transcript ordered by the Superior Court, Appellate Division, on December 14, 1959 for appellant's unsuccessful appeal from his 1959 conviction.

cost of the transcript used on his appeal in the Superior Court, Appellate Division (R1). The appellant alleged that his civil rights had been violated pursuant to 42 U.S.C.A. §1983, and that he had been subjected to cruel and unusual punishment contrary to the Eighth Amendment to the United States Constitution, that he is being deprived of due process and equal protection of the law guaranteed by the Fourteenth Amendment. The defendants in their answers to the appellant's complaint alleged that a claim had not been stated upon which relief could be granted, that the acts complained of were done in their official capacity in compliance with the law, and that the court had no subject matter jurisdiction to pass on the merits of the appellant's complaint unless heard and determined by a three-judge court as required by 28 U.S.C.A. §2281 (R13, 15). Counsel was appointed to represent the appellant and a notice of motion for summary judgment was filed with the court (R17). Appellant made requests for admissions from the defendants, Howard Yeager, A. L. Dempsky, and Harry Lerner, which indicated that the reimbursement procedure was not invoked against eight inmates whose convictions had been affirmed on appeal (R23, 28). Of the foregoing inmates, only three had been convicted by the Essex County Prosecutor, and presumably their transcripts on appeal were paid for by the Essex County Treasurer. With respect to two of the Essex County prisoners, appellate proceedings were still pending (R34). With respect to the other defendants, who allegedly had not been subjected to the reimbursement procedures of the New Jersey law, their prosecutions were conducted by different County Prosecutors, and the costs of their transcripts were paid for by the counties involved, none of which was Essex County. The State Prison authorities apparently had no

final information concerning the position of these other counties with respect to reimbursement affecting four of these remaining prisoners (R35).

The appellant, in his affidavit in support of the motion for summary judgment, acknowledged that he had in fact obtained a transcript so as to effectively prepare an appeal *in forma pauperis*, that he had the benefit of its use for approximately one month and had returned it to the Essex County Clerk's Office (R18).[2] Appellant requested the relief demanded in the complaint on the ground that there was no genuine issue as to any material fact and that judgment be granted as a matter of law (R17). The notice of motion was supported by a stipulation of facts entered into by all the parties to this suit (R37).

A three-judge court was appointed to hear the motion for summary judgment pursuant to 28 U.S.C.A. §2284. Summary judgment for the appellant was denied on February 18, 1965 (R59). The reasons of the Court are set forth in its opinion (R52-58). The appellant moved to correct the judgment on the ground that his motion for summary judgment did not include his Eighth Amendment ground and that there was a controversy as to a material fact (R60-62). The motion to correct judgment was denied on May 17, 1965 (R72), for the reasons expressed in an accompanying opinion (R63-72).

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[2] It is to be noted that at the time the transcript was returned, appellant had not, of course, reimbursed the full cost thereof. Moreover, there is no indication that the transcript is not available to appellant for use in any subsequent proceeding relating to his conviction.

Summary of Argument

The New Jersey statute, N.J.S. 2A:152-17 *et seq.*, provides for the furnishing of a free transcript to indigent defendants seeking relief in criminal proceedings, and, provides further, in appropriate circumstances, for the reimbursement of the costs therefor. It is a proper exercise of the State's power to administer its judicial system and to maintain and administer its penal institutions. The effectuation of these State policies are accomplished by the New Jersey statute in a reasonable manner which does not in any sense deny to indigent criminal defendants their substantial right to a prompt, adequate and effective review, and it does not violate any recognized constitutional rights or privileges.

It has been established that State and local authorities are not under a constitutional obligation to furnish appellate review from criminal convictions. The State of New Jersey does, however, provide judicial review of criminal convictions. If a state, as a matter of internal policy, does provide relief in criminal proceedings, it may not deprive, in purpose or effect, a criminal defendant of such relief solely because of his financial condition or state of indigency. Such a denial is concededly a violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution.

While a state may not prevent an indigent criminal defendant from enjoying the same or substantially similar rights to secure relief that are furnished in general to all criminal defendants, a state may pursue reasonable policies in furnishing these judicial rights to indigent criminal defendants. Thus, a state may take into account the policy of discouraging abusive, nonmeritorious and frivolous appeals.

The New Jersey statute provides an indigent criminal defendant with substantially the same opportunity for prompt, adequate and effective review of the criminal proceedings resulting in his conviction as that which is available to a nonindigent. That portion of the New Jersey statute which requires an indigent, upon a proper verified application, to satisfy the court of his state of poverty and that a transcript, or portion thereof, is necessary for the prosecution of his application for relief or his appeal, is reasonable and constitutionally valid. It is designed, in sensible measure, to avoid the undue or unnecessary preparation of transcripts at public expense. Moreover, in the case *sub judice,* transcripts were in fact furnished promptly to the appellant without cost in order to enable him to prosecute appeals from his criminal convictions.

That portion of the New Jersey statute which entails the reimbursement of the costs of a transcript, previously furnished free of charge, from the institutional wages of a defendant-prisoner in the event his appeal or application for relief has been unsuccessful, is constitutionally valid and reasonable. This provision does not constitute or operate as a condition precedent to the exercise of the right of appeal, and it is not a financial barrier which is interposed as a precondition to the opportunity of an indigent defendant to pursue and secure appellate relief. It does not, therefore, penalize or discriminate against defendants solely because of their indigency. The reimbursement provision of the New Jersey statute in purpose and effect involves the general state policy, applicable to all litigants, criminal and civil, indigent and nonindigent, to discourage abusive use of the judicial machinery and senseless litigation. Moreover, as a matter of penal manage-

ment, the State of New Jersey does not recognize any absolute or vested right of a prisoner to receive compensation in the form of cash. Any institutional earnings are an aspect of the administration of the penal system and the handling of individual prisoners, which are matters committed to the discretion of the State and its prison authorities.

The New Jersey statute does not, on its face or in its application to the appellant herein, constitute invidious discrimination contrary to the Fourteenth Amendment to the United States Constitution. In providing for the reimbursement from institutional earnings of the costs of a transcript previously furnished free of charge to an indigent criminal defendant who is a prisoner, the statute effectuates reasonable State policy and does not constitute arbitrary, unreasonable or capricious classification. There is no constitutional requirement that, in pursuing its policy, the State must treat other classes of criminal defendants, such as those convicted of capital crimes, or paroled prisoners and the like, in a manner identical to that accorded incarcerated defendants.

Finally, in its particular application, the appellant has suffered no invidious discrimination under the New Jersey statute. There are no facts from which an inference can be drawn that the State of New Jersey or its political subdivision of the County of Essex has pursued a policy of intentional discrimination or that their actions reflect a pattern of deliberate, selective enforcement against appellant.

ARGUMENT

POINT I

The New Jersey statute, which enables an indigent defendant to receive a free transcript for the prosecution of a criminal appeal and which provides further for the reimbursement of the cost of such transcript from any institutional earnings of such defendant in the event his appeal is unsuccessful, furnishes prompt appellate review to indigents on the basis of substantial equality with other criminal defendants and does not deprive such persons of rights guaranteed under the United States Constitution.

A

The appellant, Joseph A. Rinaldi, argues that the New Jersey statute, specifically the reimbursement section thereof, L. 1956, c. 134, §2, N.J.S. 2A:152-18, constitutes a denial to him, as an indigent prisoner, of constitutional due process and equal protection in seeking appellate review (Ab7). In appellant's view, the New Jersey statute is contrary to a "pattern and policy" said to be reflected in various United States Supreme Court decisions, which it is asserted, prevent a fiancial condition, however slight, to be interposed upon an indigent's direct or indirect appeal of a criminal conviction (Ab17).

Appellant's position is predicated upon his evaluation of the various decisions including and emanating from *Griffin* v. *Illinois*, 351 U. S. 12 (1956) which treat of the rights of indigents accused of crime in seeking appellate review of criminal convictions.

In *Griffin*, the petitioners, convicted in Illinois of armed robbery, filed a motion in the trial court asking that a transcript of the proceedings be furnished without costs. They alleged that they were "poor persons" unable to pay the fees necessary to acquire the transcript and record needed to prosecute an appeal. Under the Illinois State procedures, in order to get full appellate review of alleged errors, it was necessary to furnish a bill of exceptions and this could not be accomplished without a stenographic transcript. Petitioners asserted, therefore, that failure to obtain a transcript would violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Petitioners' application was denied, as was their subsequent petition under the Illinois Post-Conviction Hearing Act. It was conceded by the State and assumed, without apparent contradiction, by this Court that "the petitioners could not get appellate review of those [alleged trial] errors solely because they were too poor to buy a stenographic transcript." 351 U. S. at 16. It is in this context that the Court stated:

> "* * * In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color. Plainly the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial. * * *
>
> * * *
>
> "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review ac-

corded to all who have money enough to pay the costs in advance. It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. See, e.g., McKane v. Durston, 153 U. S. 684, 687-688. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. Citations omitted." 351 U. S. at 17-18.

And further:

"[T]o deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside. Many States have recognized this and provided aid for convicted defendants who have a right to appeal and need a transcript but are unable to pay for it. A few have not. Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law. There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." *Ibid.* at 19.

The *Griffin* case struck down, with complete justification, the Illinois procedure which required a criminal defendant "to pay costs in advance" of taking an appeal. Patently, and viewed realistically, this procedure, as applied to an impecunious defendant, deprived him of any right to take an appeal—a right which was readily available to defendants who had the financial ability to pay the normal costs. The Court did "not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The [Illinois] Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants." 351 U. S. at 20. Thus, the essential question is whether the New Jersey procedures afford adequate appellate review to indigent defendants even though such procedures may not be identical to those afforded other defendants in that they involve a reimbursement feature applicable to defendants who have institutional earnings.

B

The State of New Jersey, it is to be emphasized, recognizes and accords full judicial review of criminal proceedings. The right of appeal by criminal defendants is secured by Art. VI, Sec. V, pars. 1, 2 and 3 of the New Jersey Constitution of 1947. The detailed mechanics of criminal appellate review are specified in the Rules of Court. Rule 1:2-4 provides for appeals in criminal causes. Criminal appeals from constitutional courts are taken to the Appellate Division of the Superior Court pursuant to R.R. 2:2-1 and 2:12-2, while appeals from courts of limited jurisdiction are taken to the county court, R.R. 3:10-1. Appeals by indigents are governed as well by the Rules of

Court, R.R. 1:2-7. In certain causes, such as capital cases, appeals are taken directly to the State Supreme Court. R.R. 1:2-1(c). In assessing the validity of N.J.S. 2A:152-17 *et seq.*, and particularly its reimbursement feature, as applied to an indigent, there must be a sensible appreciation that it is the policy of the State to provide wide appellate review of criminal proceedings.

The *Griffin* case involved the assessment of normal costs of litigation in connection with the processing of an appeal. This condition was imposed by the State and operated indirectly as a pre-condition to the taking of a criminal appeal. In several of the decisions following *Griffin*, however, there were involved, not financial conditions as such but other procedures or requirements which, as applied to indigents, could effectively frustrate their ability to obtain appellate review. These decisions have pertinency not only because they elaborate upon the meaning and scope of the *Griffin* principles but because they also apply to the provision of the New Jersey statute which requires an indigent to make an application for a free transcript.

P.L. 1956, c. 134, § 1, N.J.S. 2A:152-17, states:

> "Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the

> sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense."

The United States Supreme Court has considered this type of statutory requirement in several cases. In *Eskridge* v. *Washington State Board of Prison T. & P.*, 357 U. S. 214 (1958), the defendant, convicted of murder, made an application for a free transcript after filing his notice of appeal. The state law provided for the furnishing of a free transcript to an indigent if, in the trial judge's opinion, justice would thereby be promoted. The trial court determined that justice would not be promoted in the particular appeal by the furnishing of a free transcript, and the State Supreme Court affirmed the denial and at the same time dismissed the appeal for failure to file a transcript. The case came before the United States Supreme Court on a writ of habeas corpus charging that failure to furnish a free transcript was a violation of due process and equal protection. The United States Supreme Court stated that, while a state need not furnish a transcript in every case of indigency, "* * * a State denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate re-

view except those who cannot afford to pay for the records of their trials. We hold that Washington has denied this constitutional right here. * * *" 357 U. S. at 216.

Thereafter, the State of Washington amended its procedures governing the furnishing of transcripts to indigent defendants. These rules called for an application to the trial judge for free transcripts and provided:

> "1. An indigent defendant in his motion for a free statement of facts must set forth:
>
> "a. The fact of his indigency
>
> "b. The errors which he claims were committed; and if it is claimed that the evidence is insufficient to justify the verdict, he shall specify with particularity in which respect he believes the evidence is lacking. (The allegations of error need not be expressed in any technical form but must clearly indicate what is intended).
>
> "2. If the state is of the opinion that the errors alleged can properly be presented on appeal without a transcript of all the testimony,
>
> "a. it may make a showing of what portion of the transcript will be adequate, or
>
> "b. if it believes that a narrative statement will be adequate, it must show that such a statement is or will be available to the defendant.
>
> "3. The trial court in disposing of an indigent's motion for a statement of facts at county expense shall enter findings of fact upon the following matters:
>
> "a. The defendant's indigency
>
> "b. Which of the errors, if any, are frivolous and the reasons why they are frivolous

"c. Whether a narrative form of statement of facts will be adequate to present the claimed errors for review and will be available to the defendant; and, if not

"d. What portion of the stenographic transcript will be necessary to effectuate the indigent's appeal.

"4. The trial court's disposition of the motion shall be by definitive order." *Woods* v. *Rhay,* 54 Wash. 2d 36, 44-45, 338 P. 2d 332, 337 (1959).

Application of this statute came before this Court in a later case, *Draper* v. *State of Washington,* 372 U. S. 487 (1963). In this case indigent petitioners were convicted of robbery. Acting *pro se* they filed timely notices of appeal from their convictions and motions for the trial judge to direct the furnishing of a free transcript. In the motions for the transcript it was alleged that there were various trial errors. The trial court, after hearing argument from both the assigned trial counsel and the petitioner Draper, denied the motion, without reciting any particular factual findings, on the basis that the alleged trial errors were patently frivolous, that there was overwhelming evidence of their guilt, and that the furnishing of a transcript would be a waste of public funds. 372 U. S. at 493. The Washington Supreme Court denied further review, finding that the trial judge had properly found the appeal to be frivolous. The ruling of the Washington Supreme Court, however, was made without reference to any stenographic record of the trial and was based solely on the record of the hearing on the motion for the transcript. The United States Supreme Court held that the State Courts' consideration of the assigned errors, without recourse to a sufficient trial record or any relevant portions of the rec-

ord or any relevant portions of the record of the trial, was not itself based upon a record of sufficient completeness and the denial of petitioners' request for a transcript constituted a violation of constitutional rights under the *Griffin* and *Eskridge* cases. It stated that the complete denial of any means for an indigent to secure adequate review of the merits of his appeal in an appellate court was impermissible when no such impediment to appellate review confronted nonindigents and that a State could not deny the request of these petitioners for review of the denial of the motion for a transcript without providing a record sufficiently complete to permit consideration of their claims. 372 U. S. at 497-498. See, *The Supreme Court, 1962 Term*, 77 Harv. L. Rev. 62, 105 (1963).

In similar fashion, the United States Supreme Court in *Lane* v. *Brown*, 372 U. S. 477 (1963) determined that an Indiana statute which required the approval of the Public Defender (*i.e.*, assigned counsel) as to whether or not a transcript was necessary in connection with the filing of an appeal by an indigent criminal defendant, and the denial of such a transcript because such authorization was not forthcoming, was unconstitutional. The decision of the Public Defender was not subject to judicial review. See also, *Hardy* v. *United States*, 375 U. S. 277 (1963) (under Federal statute an appeal *in forma pauperis* may be authorized except if the trial court certifies that "it is not taken in good faith.")

These cases establish firmly the proposition that an indigent's right to appeal, and his right to a transcript free of charge necessarily incidental to an appeal, cannot be encumbered or obstructed by the requirement that prior approval must be obtained therefor where there are no

adequate standards upon which such approval must be based or where there is an insufficient record upon which to evaluate the validity or soundness of the disapproval of the appeal or transcript request. This proposition was inferentially expressed in *Griffin* itself wherein the Court stated that there need not be a free transcript in every case of indigency where a defendant cannot buy it and that a state may find other means of affording adequate and effective appellate review to indigent defendants. 351 U. S. at 20. It was reiterated in *Eskridge* v. *Washington State Bd. etc., supra,* 357 U. S. at 216 and in *Draper* v. *State of Washington, supra,* 372 U. S. at 495.

The New Jersey statute which requires that an indigent make application under oath for a transcript and to show in that application that the transcript is "necessary" or "needed" for an appeal is valid on its face. There may be cases in which the application on the appeal envisaged by an indigent defendant does not require a transcript or does not require a full transcript. Thus transcripts might be unnecessary, or could be abbreviated, in appeals involving the validity of a statute, or sufficiency of an indictment, plea, arrest or arraignment or some other limited aspect of the proceedings. This was stressed in *Draper* v. *State of Washington, supra,* 372 U. S. at 495-496:

> "* * * [P]art or all of the stenographic transcript in certain cases will not be germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances. If for instance, the points urged relate only to the validity of the statute or the sufficiency of the indictment upon which conviction was predicated, the transcript is irrelevant and need not be

provided. If the assignments of error go only to rulings on evidence or to its sufficiency, the transcript provided might well be limited to the portions relevant to such issues. Even as to this kind of issue, however, it is unnecessary to afford a record of the proceedings pertaining to an alleged failure of proof on a point which is irrelevant as a matter of law to the elements of the crime for which the defendant has been convicted." Also *Griffin* v. *Illinois, supra*, 351 U. S. at 13.

It is also important to note that in each of the cases in which the United States Supreme Court determined that the application procedures of a state were unconstitutional, the transcript had in point of fact been denied to the indigent defendant. In the case *sub judice* the appellant Rinaldi obtained transcripts in both appeals which he took. There was no obstruction or obstacle thrown in the progress of his appeals. In the appeals from both of his convictions the New Jersey Court was satisfied with his showing of indigency and the need for the transcripts to prosecute the appeals. His applications were promptly received, reviewed and granted. In short, appellant's "access to a trial transcript [has been] * * * as complete as that of a paying defendant." *Hardy* v. *United States, supra*, 375 U. S. at 291 (Goldberg, *J.* concurring). For these very obvious reasons, therefore, the appellant makes no constitutional attack upon that section of the New Jersey statute, N.J.S. 2A:157-17, which requires an indigent defendant to apply for a transcript and to satisfy the court that such a transcript is necessary for the prosecution of his appeal or for the relief which he seeks. This provision, on its face and as applied to appellant, is constitutional.

C

Appellant concentrates his constitutional attack upon that section of the New Jersey statute which requires reimbursement from institutional earnings of the costs of a transcript in the event a defendant's appeal from his criminal conviction is unsuccessful.

N.J.S. 2A:152-18 provides:

> "The county treasurer shall file a notice of said payment and the amount thereof with the institution in which said person, upon whose application the transcript of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by the trial court or an appellate court."

It is clear that this statute does not impose upon a defendant any direct or fixed financial obligation as a precondition to the taking of an appeal or obtaining a transcript. Appellant asserts, however, that it operates as a financial consideration. In view of this assertion, the constitutional validity of this provision should be gauged in the context of those United States Supreme Court decisions dealing with state procedures imposing financial considerations incidental to the exercise of the right of appeal.

In the *Griffin* case, as noted, the Court was concerned with the application of a state procedure which operated as a financial condition. The procedure, quite simply, involved the practical necessity to obtain a transcript in order for an appellant to be able to secure full appellate

review of trial errors. Since a stenographic transcript could not be obtained without paying for it, obviously an indigent appellant could not get appellate review of trial errors. This the United States Supreme Court found to be constitutionally obnoxious and thus stated:

> "Surely no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs *in advance* should be denied the right to plead not guilty or to defend themselves in court." (Emphasis supplied.) *Griffin* v. *Illinois, supra,* 351 U. S. at 17.

In *Burns* v. *State of Ohio,* 360 U. S. 252 (1959), the defendant was convicted of burglary and sentenced to life imprisonment. On an intermediate appeal the conviction was affirmed. He then filed a notice of appeal with the State Supreme Court but his papers were returned by the court clerk for failure to pay a filing fee of $20. It was conceded, on certiorari to this Court, that in effect the clerk's actions constituted a final judgment by the State Supreme Court. In defense of the filing fee requirement, it was urged that the appellate jurisdiction of the State Court was discretionary with respect to all criminal defendants. The Court rejected this argument on the ground that there was in this case a complete denial to the indigent defendant of any chance to appeal or to invoke the discretionary power of the court. 360 U. S. at 258.

The question as posed by the Court was "whether a State may constitutionally require that an indigent defendant in a criminal case pay a filing fee *before* permitting him to file a motion for leave to appeal in one of its

courts." (Emphasis supplied). 360 U. S. at 253. The Court held:

> "* * * The imposition by the State of *financial barriers* restricting the *availability* of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." (Emphasis supplied.) 360 U. S. at 258.

In *Douglas* v. *Green*, 363 U. S. 192 (1960), it was indicated that prepayment of docket fees, as applied to an indigent, made out a habeas corpus case of deprivation of constitutional rights to equal protection of the laws with respect to the prosecution of an appeal from a criminal conviction. Similarly, it was held in *Smith* v. *Bennett*, 365 U. S. 708 (1961), that a prepayment of a $4 filing fee could not be imposed as a pre-condition to the taking of an appeal from a criminal conviction by an indigent defendant. The Court stated:

> "* * * We hold that to interpose any financial condition *between* an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws." (Emphasis supplied.) 365 U. S. at 709.

These decisions establish the proposition that a state may not prevent an indigent from prosecuting an appeal from his conviction by requiring the payment of any financial obligation as a condition of his right of review. The State may not take advantage of a defendant's penurious condition. Procedures which exact any payment for the right to utilize the judicial machinery clearly discriminate against indigent defendants solely on the basis of their financial inability to pay.

Discrimination or substantial differences in treatment attributable only to indigency have no basis in law or fact. As stated in *Griffin* v. *Illinois, supra*: "Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." (351 U. S. at 19). "Plainly, the ability to pay costs has no rational relationship to a defendant's guilt or innocence and cannot be used as an excuse to deprive a defendant of a fair trial." (*Id.* at 17-18).

The New Jersey statute requiring the reimbursement of costs of a transcript previously furnished in the prosecution of an unsuccessful appeal is not, either literally or in any other sense, "any financial consideration [interposed] between an indigent prisoner of the State and his exercise of a state right to sue for his liberty * * *." *Smith* v. *Bennett, supra*, 365 U. S. at 709. It does not entail the payment *"in advance"* of any costs or fees as a condition precedent to the taking of an appeal. *Griffin* v. *Illinois, supra*, 351 U. S. at 17. It does not constitute the prepayment of any court fees or costs before appellate review can be pursued and secured. *Douglas* v. *Green, supra.* It does not, therefore, fall within the proscription of the Supreme Court decisions invalidating financial obligations imposed by states upon indigent defendants as a precondition to their right to appeal.

Appellant argues, however, that the obligation to reimburse operates as some kind of a "psychological" barrier or obstacle to the taking of an appeal. Presumably, this is what is to be inferred from his assertion that he must "gamble his institutional wages in order to secure a transcript" and that "this fear would be particularly felt by a person already reduced to indigency" (Ab18). It is not

discernible from the record in this case that the appellant, Rinaldi, labored under any psychological handicap or sense of apprehension whatsoever. He availed himself of his right to appeal under the New Jersey laws in connection with two convictions against him. In each appeal he obtained a transcript promptly under N.J.S. 2A:152-17. In each he was well aware of the requirement to defray the costs of the transcripts in the event his appeals were unsuccessful. Only after the conclusion of his appeal from the second conviction, and the subsequent assessment of costs for the preparation of the transcript in that appeal, did the appellant make the assertion by inference, in this case, that he was deterred in the exercise of his right to appeal by a fear of losing his institutional earnings.

Appellant conceives that he is automatically entitled to compensation as a prisoner of the State of New Jersey and consequently cannot be subjected to the garnishment of these "wages" in connection with his criminal litigation. He does so far as to assert that the loss of his "daily wage" is "cruel and unusual punishment" (Ab19). It should be emphasized that the payment of penal wages, in the first instance, is a matter of discretion on the part of the state.[3] Any such compensation is basically a tool in

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[3] The New Jersey Statute, New Jersey Laws of 1918, c. 147, as amended, N.J.S.A. 30:4-92 provides:

> "The inmates of all correctional and charitable, hospital, relief and training institutions within the jurisdiction of the State Board shall be employed in such productive occupations as are consistent with their health, strength and mental capacity and shall receive such compensation therefor as the State Board shall determine.

(*Footnote continued on following page*)

penal management. Under New Jersey law, compensation need not take the form of cash but may be considered as remission of sentence on account of good behavior. New Jersey Laws of 1918, c. 147, as amended, N.J.S.A. 30:4-140. Under New Jersey prison regulations and practices prisoners ordinarily receive credit on their sentences as well as nominal earnings.[4] There is, in short, no vested right in payment to a convict for his labor in whole or in part is a dispensation of legislative grace, a mere gratuity (and not a wage) that may be granted or withheld or withdrawn by the Legislature at any time. *State Board of Corrections* v. *Hays,* 190 Ky. 147, 227 S. W. 282 (1920); *Shain* v. *Idaho State Penitentiary,* 77 Idaho 292, 291 P. 2d 870 (1955); *cf. Scott* v. *City of Hobbs,* 69 N. M. 330, 366 P. 2d 854 (1961); *Brown* v. *Jamesburg State Home for Boys,* 60 N. J. Super. 445, 158 A. 2d 123 (Cty. Ct. 1960). In a variant context the

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(Footnote continued from preceding page)

"Compensation for inmates of correctional institutions may be in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed 1 day for each 5 days of productive occupation, but remission granted under this section shall in no way affect deductions for good behavior or provided by law.

"In addition, all inmates classified as minimum security and who are considered sufficiently trustworthy to be employed in honor camps, farms or details, shall receive further remission of time from sentence at the rate of 3 days per month for the first year of such employment and 5 days per month for the second and each subsequent year of such employment."

[4] It is the fact, though not a matter of formal record, that appellant has continued to receive compensation in the form of remission from his sentence while subject to the reimbursement provisions of the New Jersey statute.

New Jersey Supreme Court, in *Cooke* v. *Tramburg*, 43 N. J. 514, 519, 205 A. 2d 889 (1964), elaborated upon the broad and flexible discretion vested in the State with respect to the treatment of convicts and its system of penology:

> "Although a convict, upon his admission to a prison, does not forfeit all his civil liberties, *Sewell* v. *Pegelow*, 291 F. 2d 196 (4 Cir. 1961); *Coffin* v. *Reichard*, 143 F. 2d 443, 155 A. L. R. 143 (6 Cir. 1944), cert. denied 325 U. S. 887, 65 S. Ct. 1568, 89 L. Ed. 2001 (1945), the discipline required to maintain the proper functioning of the prison community may curtail such liberties. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.' *Price* v. *Johnston*, 334 U. S. 266, 285, 68 S. Ct. 1049, 1060, 92 L. Ed. 1356, 1369 (1948). See also, *McBride, supra; Sostre, supra; Brown* v. *McGinnis*, 10 N. Y. 2d 531, 225 N. Y. S. 2d 497, 180 N. E. 2d 791 (Ct. App. 1962). Compare *In re Ferguson*, 55 Cal. 2d 663, 12 Cal. Rpt. 753, 361 P. 2d 417 (Sup. Ct. 1961), cert. denied *Ferguson* v. *Heinze*, 368 U. S. 864, 82 S. Ct. 111, 7 L. Ed. 2d 61 (1961)." 205 A. 2d at 891-892.

It is in this context that the statute involved herein, and particularly N.J.S. 2A:152-18, must be assessed. The reimbursement provision reflects a State legislative policy, in connection with the handling and management of prisoners, that it is in the public interest to require that compensation to inmates should take the form of, or be

applied to, the payment of the costs of transcripts, previously furnished without charge.

In establishing the fundamental proposition that a State may not deny indigent defendants rights substantially equal to those accorded nonindigents, this Court has stressed the countervailing tenet that a State may pursue and effectuate its own conceptions of public policy in formulating and implementing procedures in criminal proceedings applicable to indigents. In *Griffin* v. *Illinois, supra,* 351 U. S. at 20, it was stated:

> "We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants. For example, it may be that bystanders' bills of exceptions or other methods of reporting trial proceedings could be used in some cases. The Illinois Supreme Court appears to have broad power to promulgate rules of procedure and appellate practice."

Again, in *Eskridge* v. *Washington State Board, etc., supra,* 357 U. S. at 216: "We do not hold that a State must furnish a transcript in every case involving an indigent defendant". As stated by Justice Goldberg, concurring in *Hardy* v. *United States, supra,* 375 U. S. at 291: "This 'concept of "equal justice" does not confuse equality of treatment with identity of treatment' ". This principle was more fully expressed in *Draper* v. *State of Washington, supra,* 372 U. S. at 495-496:

"In considering whether petitioners here received an adequate appellate review, we reaffirm the principle, declared by the Court in Griffin, that a State need not purchase a stenographer's transcript in every case where a defendant cannot buy it. 351 U. S., at 20, 76 St. Ct., at 591. Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or a bystander's bill of exceptions might all be adequate substitutes, equally as good as a transcript. Moreover, part or all of the stenographic transcript in certain cases will not be germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances. If, for instance, the points urged relate only to the validity of the statute or the sufficiency of the indictment upon which conviction was predicated, the transcript is irrelevant and need not be provided. If the assignments of error go only to rulings on evidence or to its sufficiency, the transcript provided might well be limited to the portions relevant to such issues. Even as to this kind of issue, however, it is unnecessary to afford a record of the proceedings pertaining to an alleged failure of proof on a point which is irrelevant as a matter of law to the elements of the crime for which the defendant has been convicted. In the examples given, the fact that an appellant with funds may choose to

> waste his money by unnecessarily including in the record all of the transcript does not mean that the State must waste its funds by providing what is unnecessary for adequate appellate review. * * *"

A state policy entitled to recognition is one which would prevent abuse of its judicial machinery. The decisions of this Court do not "militate[s] against a State's formulation and application of operatively nondiscriminatory rules to both indigents and nonindigents in order to guard against frivolous appeals." *Draper* v. *State of Washington, supra,* 372 U. S. at 499.

> "But in order to avoid or minimize abuse and waste, a State may appropriately hedge about the opportunity to prove a conviction wrong. When a State not only gives leave for appellate correction of trial errors but must pay for the cost of its exercise by the indigent, it may protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent. The growing experience of reforms in appellate procedure and sensible, economic modes for securing review still to be devised, may be drawn upon to the end that the State will neither bolt the door to equal justice nor support a wasteful abuse of the appellate process." *Griffin* v. *Illinois, supra,* 351 U. S. at 24 (Frankfurter, *J*, concurring).

It has long been accepted that a state, in the administration of its judicial system, may impose the costs of litigation in a manner which will discourage nonmeritorious, frivolous, or abusive use of the judicial process. Annot., 65 A. L. R. 2d 854 (1959). Court costs are a part of the

burden of litigation and the imposition thereof upon a losing party does not deprive the litigant of his constitutional rights; such a requirement does not impermissibly intrude upon an acknowledged right of a litigant to obtain judicial relief. *E.g., Ready* v. *Ready*, 33 Ill. App. 2d 145, 178 N. E. 2d 650 (Ill. App. Ct. 1962) (civil action for accounting); *City of Miami* v. *Murphy*, 136 So. 2d 825 (Fla. Sup. Ct. 1962) (involving an action by municipality for damages); *Daniel* v. *Daniel*, 116 Wash. 82, 198 Pac. 728 (1921); *State* v. *Hillebrandt*, 244 La. 742, 154 So. 2d 384 (1963) (indigent not relieved from the prepayment of the costs for issuing subpoenaes; the dissenting opinion stated that the costs should not have been payable in advance but that the payment thereof should be deferred until the litigation was concluded and the costs would abide the result).

The assessment of costs against an unsuccessful litigant is not designed merely to reward the victor or to penalize the vanquished. There is no right to litigate entirely without expense or to impose upon the public the entire burden of maintaining the courts. *In re Lee*, 64 Okla. 310, 168 Pac. 53 (1917). It is a policy recognized in the administration of the federal judicial system. *Eg.*, 28 U. S. C. §1918, 62 Stat. 955; *Gleckman* v. *United States*, 80 F. R. D. 394 (8th Cir. 1935); *Chicago Sugar Co.* v. *American Sugar Refining Co.*, 176 F. 2d 1 (7th Cir. 1949); *Perkins* v. *Cingliano*, 296 F. 2d 567 (4th Cir. 1961), (applied to an indigent in a civil case). The policy of the taxation of costs against unsuccessful criminal defendants is adhered to generally by a majority of the jurisdictions. *Legislation*, 17 *Vand. L. R.* 1572 (1964).

The State of New Jersey has adhered to the generally accepted policy of assessing costs as a control over the

flow of litigation. New Jersey Statutes, 22A:1-1 *et seq.*; see, *In re Caruso*, 18 N. J. 26 (1955); *Bloomfield Bd. of Health* v. *Forest Hill Terrace, Inc.*, 66 N. J. Super. 522, 169 A. 2d 522 (Cty. Ct. 1961).

A state does not therefore have an absolute duty to eliminate all factors which might serve as a break upon the promiscuous use of its judicial system. See, *The Supreme Court Review, 1962 Term*, 77 Harv. L. Rev. 62, 105 (1963); comment, *Appellate Review for Indigent Criminal Defendants in the Federal Courts*, 26 U. Chi. L. Rev. 454 (1959); *Poverty and the Administration of Federal Criminal Justice, Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice* (1963). The assessment of costs is such a factor and, if costs can be imposed upon *any* litigant in a manner which does not trench upon his ability to pursue relief within the judicial system, there should be no constitutional objection.

The New Jersey statute gives to the indigent appellant the right to have his case reviewed promptly and effectively. To the extent he may receive institutional earnings from the state for which he may be subsequently assessed in the event his appeal is unsuccessful, he is in a position not disimilar to many nonindigent defendants. *Cf. Virginia Code*, §17.301; Ohio Code Ann., §2301.24; *Cf. State* v. *Frato*, 168 O. 281, 154 N. E. 2d 432 (1958). It is not unfair to ask an indigent defendant who might be receiving institutional earnings to think before he acts. Comment, *Appellate Review for Indigent Criminal Defendants in the Federal Courts*, 26 U. Chi. L. Rev. 454 (1959). In fact, the appellant presently before this court has overcome this inhibition and has taken full advantage of the New Jersey statute.

In effect the appellant asserts his right to be free of the financial burden commonly attendant upon litigation. There is no reason, however, as a matter of constitutional law, why a defendant situated as the appellant herein cannot be called upon to share the costs of litigation, provided this obligation does not impede his right to appeal. Taxed costs are purposefully designed to make a litigant pause before resorting to the courts. Costs should, and do, act as a deterrent to litigation to all persons except, perhaps, the extremely affluent, the indifferent, or the reckless. There are relatively few persons who can afford to disregard or be unmindful of the expenses entailed in judicial proceedings. Assuredly there are many persons, not meeting the minimal tests of poverty or indigency; and there are many persons of modest means and small incomes, or with larger means but with correspondingly greater financial obligations, who must weigh carefully the cost involved before embarking on litigation. Indeed, the impact of litigation may fall with crushing weight upon an individual who falls within that vast middle ground between poverty and wealth. There is no reason, as a matter of policy or constitutional law, why the appellant should be afforded preferential treatment by being insulated from any of the burdens of the operation of the State's judicial system especially when the means for his assumption of this burden are furnished by the State itself.

It is respectfully submitted that the New Jersey statute, P.L. 1956, c. 134 §17 *et seq.*, N.J.S.A. 2A:152-17 *et seq.*, as applied to the appellant and on its face, is constitutional and does not violate the constitutional rights recognized by the Fourteenth Amendment.

POINT II

The reimbursement provision of the New Jersey statute, which entails the assessment against any institutional earnings of a defendant for the costs of a transcript previously furnished free of charge in the event his appeal from the criminal conviction is unsuccessful, is neither discriminatory in its overall application nor in its application to the appellant.

Appellant urges that N.J.S. 2A:152-18, the reimbursement feature of the New Jersey statute, is discriminatory in its overall application against unsuccessful indigent defendants and in its application to him personally. Initially, it is contended that the underlying policy of the statute as it applies to unsuccessful indigent prisoners is discriminatory since its application favors the following categories of litigious inmates: (1) the unsuccessful non-indigent appellant who continues to draw institutional wages; (2) the unsuccessful indigent appellant who has been released from prison before reimbursement is sought against him; (3) an indigent convicted of a capital offense, whose transcript the State provides free of charge; and (4) the successful indigent (Ab19-20). Secondly, the appellant contends that N.J.S. 2A:152-18, even if constitutional on its face, is applied in a discriminatory fashion (Ab19-20). With respect to the charge of personal discrimination, appellant contends that preferential treatment has been accorded (1) several unsuccessful indigent appellants from Essex County; (2) several unsuccessful indigent appellants from other counties in New Jersey; and (3) at least one unsuccessful indigent appellant who was paroled (Ab20).

A

The challenge that the inherent statutory policy posits an invidious discrimination against unsuccessful indigent prisoners can only be sustained if the classifications so created are arbitrary and irrational. It is beyond dispute that a state may regulate different classes of people in different ways so long as the classifications are relevant to the state's objectives.

> "The constitutional command for a state to afford 'equal protection of the laws' sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task. A law which affects the activities of some groups differently from the way in which it affects the activities of other groups is not necessarily banned by the Fourteenth Amendment. See *e.g., Tigner* v. *Texas,* 310 U. S. 141, 147. Otherwise, effective regulation in the public interest could not be provided, however essential that regulation might be. For its is axiomatic that the consequence of regulating by setting apart a classified group is that those in it will be subject to some restrictions or receive certain advantages that do not apply to other groups or to all the public. *Atchison, T. & S. F. R. Co.* v. *Matthews,* 174 U. S. 96, 106. This selective application of a regulation is discrimination in the broad sense, but it may or may not deny equal protection of the laws. Clearly, it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to achievement of the regulation's objectives." *Kotch* v. *Pilot Commissioners,* 330 U. S. 552, 556 (1947).

The evident purpose of the statute *sub judice* is to enable indigent prisoners to seek judicial relief with maximum facility, with minimum expense to the State, and in a manner responsive to the State's policy of discouraging senseless or abusive appeals. In this context, the allegations of the statute's inherent discriminatory aspects must fail. There is a clear rationale supporting the State's treatment of the unsuccessful nonindigent appellant vis-a-vis his indigent counterpart. As previously noted, there are a plethora of individuals, neither indigent nor affluent, who are subjected uniformly to the taxation of court costs in the event of unsuccessful litigation. In all too many instances, these burdens can be oppressive. There is no way, however, for a state, in this non-utopian world, to erradicate poverty or to provide ideal economic equality among persons. As stated by Judge Harlan in his dissent in *Douglas* v. *California*, 372 U. S. 353, 361, 362 (1963):

> "Every financial exaction which the State imposes on a uniform basis is more easily satisfied by the well-to-do than by the indigent. Yet I take it that no one would dispute the constitutional power of the State to levy a uniform sales tax, to charge tuition at a state university, to fix rates for the purchase of water from a municipal corporation, to impose a standard fine for criminal violations, or to establish minimum bail for various categories of offenses. Nor could it be contended that the State may not classify as crimes acts which the poor are more likely to commit than are the rich. And surely, there would be no basis for attacking a state law which provided benefits for the needy simply because those benefits fell short of the goods or services that others could purchase for themselves."

There may be many situations in which the economic burden of litigation to a nonindigent, who is confronted with the payment for all costs and expense of litigation which may be inclusive of filing fees, attorneys' fees, investigations, printing, etc., are substantially greater than that visited upon an indigent prisoner receiving institutional wages who has no outside financial obligations or responsibilities and who pays only for the cost of a transcript after his appeal. Thus, it is neither empirically nor conceptually true that the risks of appeal which must be weighed by an indigent prisoner receiving institutional earnings and the vast majority of nonindigent defendants are appreciably different. In short, the requirement that a prisoner previously furnished a transcript free of charge reimburse the cost thereof from any of his institutional earnings, does not constitute invidious or unjustified discrimination in relation to nonindigent, unsuccessful appellants.

The assertion that there is invidious discrimination created by the New Jersey statute with regard to an unsuccessful indigent prisoner who has been released from prison before reimbursement is devoid of merit. This contention fails to appreciate the policy of the State of New Jersey that institutional earnings are but one aspect of the administration of the state's penal system. As previously demonstrated, the state is not obligated in the first instance to give its prisoners any remuneration. Moreover, any compensation which is recognized need not be in cash. It may take the form of time-credit on the sentence and may result in a shortening or remission of sentence. It is for the state to determine, as a matter of internal policy, whether the rehabilitation of a prisoner and his return to normal existence in society, and the interest of the pub-

lic in achieving such results, are better served by not assessing prisoners for transcript costs, especially where such prisoners have manifested by their good behavior that they deserve parole.

The State's exception for indigents convicted of capital offenses is based upon sound considerations. The extreme gravity of capital cases *per se* supports the State's determination to exclude prisoners so convicted from the reimbursement statutes.

> "Nor does the equal protection of the laws deny a State the right to make classifications in law when such classifications are rooted in reason. 'The equality at which the "equal protection" clause aims is not a disembodied equality. The Fourteenth Amendment enjoins "the equal protection of the laws", and laws are not abstract propositions.' *Tigner* v. *Texas*, 310 U. S. 141, 147, 60 S. Ct. 879, 882, 84 L. Ed. 1124. Since capital offenses are *sui generis*, a State may take account of the irrevocability of death by allowing appeals in capital cases and not in others." *Griffin* v. *Illinois, supra*, 351 U. S. at 21. (Frankfurter, J., concurring).

The distinction between successful and unsuccessful petitioners is equally valid. For an indigent prisoner to be successful means that a court of law has determined that he was not rightfully imprisoned because of some procedural or substantive defect in the convicting process. The justice of not compelling successful prisoners to reimburse the State which had imprisoned him illegally need not be articulated. See Point I, *supra; cf. Snowden* v. *Hughes*, 321 U. S. 1 (1943).

In sum, the fact that the reimbursement statute singles out unsuccessful appellants who have received transcripts free of charge and who receive institutional earnings represents a valid classification in light of the nature of the earnings attached and the goals of the statute.

B

The appellant next challenges the State's application of the statute on the ground that several unsuccessful indigent appellants from Essex and other counties are not presently being subjected to reimbursement, and at least one successful indigent appellant was paroled without being subjected to reimbursement (Ab20). The Court should note the mechanics of reimbursement in order to properly consider this challenge. Initially, the County Treasurer must ascertain from the County Prosecutor whether the appeal of a defendant, previously furnished a free transcript, was unsuccessful. He then must notify the penal institution concerned of the expenses incurred, whereupon the institution undertakes to reimburse the County from any institutional earnings of the unsuccessful prisoner. The record does not show that the several instances of noncompliance by the officials involved were caused either at the county or the institutional level. Further, the record does not indicate fully the reasons for the noncompliance. Insofar as Essex County (which has the responsibility with respect to appellant's obligation to reimburse) is concerned, only 3 prisoners received allegedly preferential treatement. Two of these prisoners were still undertaking further appeals (R34). Moreover, appellant does not include himself in this list of allegedly favored prisoners in spite of the fact that he has not been subjected to the reimbursement provisions with respect to the prosecution

of his first appeal involving his 1959 conviction. The other prisoners from various other counties, and there are relatively few of them, may not have been subjected to the reimbursement obligation for a variety of reasons, none of which bespeaks of purposeful or invidious discrimination. The actions may have been attributable to some tardiness on the part of the prosecutor in furnishing information or some delay or laxity in the County office, or delays or misdirection of mail, or simply clerical errors or oversights. In this vein, appellant's complaint that he had possession of his transcript for only about one month (Ab21), is picayune. There is no suggestion that the transcript would not readily be made available to appellant if he had need for it. The State should be entitled to retain the transcript until it has been paid for, provided the appellant may have access to it in the event of further appeals. At any rate, there can be no intimation that the State's retention of the transcript constituted any evidence of discrimination being practiced against the appellant.

The point is that isolated instances of noncompliance do not render invalid a state-wide statutorily defined policy. *Cf. The Right to Nondiscriminatory Enforcement of the State Penal Laws*, 61 Columbia L. Rev. 1103 (1961). This Court has recognized "the necessity of showing systematic or intentional discrimination" as proof that a state statute is discriminatorily applied. *Edelman* v. *California*, 344 U. S. 357 (1953).

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection

> unless there is shown to be present in it an element of intentional or purposeful discrimination . . . But a discriminatory purpose is not presumed, *Tarrance* v. *Florida*, 188 U. S. 519, 520; . . . there must be a showing of a 'clear and intentional discrimination,' *Gundling* v. *Chicago*, 177 U. S. 183, 186; . . ." *Snowden* v. *Hughes, supra*, 321 U. S. at 8.

Isolated instances of selective enforcement of the reimbursement statute, without more, would not amount to a violation of appellant's constitutional rights. In *Oyler* v. *Boles*, 368 U. S. 448 (1961) the petitioners were convicted under West Virginia's habitual criminal statute. They alleged, *inter alia*, that the state failed to convict many others who were equally subject to its provisions. In rejecting this contention, the Court noted "* * * that it is not stated whether the failure to proceed against other three-time offenders was due to lack of knowledge of the prior offenses on the part of the prosecutors or was the result of a deliberate policy of proceeding only in a certain class of cases or against specific persons." *Ibid.* at 368 U. S. 456. It was ruled that "the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." *Id.* See also, *Moss* v. *Hornig*, 314 F. 2d 89 (2d Cir. 1963).

Appellant's innuendo that the State of New Jersey has evinced an arbitrary and invidious attitude in the enforcement of the reimbursement provision of the New Jersey statute is misplaced. The New Jersey Court has been especially sensitive and responsive to the problem of protecting fully the constitutional rights of indigents in their pursuit of judicial relief from criminal convictions. In *State* v. *Welch*, 46 N. J. 57, 214 A. 2d 857 (1957), a post-conviction

proceeding was instituted by Welch in 1964 to vacate or reverse his 1949 conviction of first degree murder under which he had been sentenced to life imprisonment. It appeared that Welch had filed a timely notice of appeal from his conviction. Under the then prevailing practice, although he had a right of appeal (N. J. Const., Art. VI, Sec. V, par. 1(c); Rule 1:2-1(c); *Midler* v. *Heinowitz*, 10 N. J. 123, 89 A. 2d 458 (1952); *State* v. *Cynkowski*, 10 N. J. 571, 575, 92 A. 2d 782 (1952)), an indigent defendant not under the death penalty was not entitled as of right to a free transcript. The basis for his appeal was trial error and it was conceded that in order to present this question, a transcript of the testimony was essential. Welch's efforts to obtain a transcript by a special rule of the Supreme Court were denied without any recited reasons. Thereafter, Welch's appeal was dismissed for lack of prosecution. The petitioner asserted that by reason of the State's failure to furnish him with a transcript of the trial testimony and the consequent dismissal of his appeal, he was prevented from obtaining appellate review. At the time his 1964 petition was brought, the stenographic notes of the trial had been destroyed. The New Jersey Supreme Court granted the petitioner's application for relief and reversed his conviction and remanded the matter for a new trial. It elected not to follow the ruling of *Norwell* v. *State of Illinois*, 373 U. S. 420 (1963) which refused to apply *Griffin* retroactively where the petitioner had not taken steps to perfect his appeal. The New Jersey Court stated:

> "Judicial refusal of that relief must now be regarded as constituting invidious discrimination under *Griffin* v. *People of State of Illinois*, and as an unconstitutional deprivation of his right of appeal under the due process and equal protection clauses of the

Fourteenth Amendment. As *Griffin* teaches, justice is not equal when the wealthy can obtain adequate appellate review and the destitute who cannot afford to buy the record are remediless. Moreover, *Eskridge* v. *Washington State Board* makes plain that Griffin is to be applied retroactively. Thus we should look at the order of this Court denying petitioner's *in forma pauperis* application for the transcript as if *Griffin* had already been decided. Doing so, we must conclude Welch's right of appeal was denied him by judicial action." 46 N. J. at 72, 214 A. 2d at 865.

Under all of the circumstances, it is respectfully urged that the New Jersey statute, L. 1956, c. 134, §1 *et seq.*, N.J.S. 2A:152-17 *et seq.*, and particularly the reimbursement provision thereof, does not constitute in its overall operative effect and in its particular application to this appellant, discriminatory action on the part of the State or its political subdivision contrary to the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the New Jersey statute, L. 1956, c. 134, §1 *et seq.*, N.J.S. 2A:152-17 *et seq.*, is valid and constitutional in all respects, and the decision of the court below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 940.—October Term, 1965.

Joseph A. Rinaldi, Appellant, v. Howard Yeager, Warden, et al. } On Appeal from the United States District Court for the District of New Jersey.

[May 31, 1966.]

Mr. Justice Stewart delivered the opinion of the Court.

The appellant, Joseph A. Rinaldi, was convicted of a criminal offense in a trial court of Essex County, New Jersey, and sentenced to prison for a term of five to 10 years. The Superior Court of New Jersey, Appellate Division, allowed him leave to appeal *in forma pauperis* and granted his petition for a transcript of the trial court proceedings, finding that the transcript was needed for the appeal and that Rinaldi was unable to pay for it.[1]

[1] The following New Jersey statute authorizes initial imposition of the expense of the transcript upon the county:

"Any person convicted of any crime may make application under oath to any judge of the County Court or Law Division of the Superior Court of the county where the venue was laid showing that a copy of the transcript of the record, testimony and proceedings at the trial is necessary for the filing of any application with the trial court, and that he is unable, by reason of poverty, to defray the expense of procuring the same, and any such judge may, being satisfied of the facts stated and of the sufficiency thereof, certify the expense thereof to the county treasurer, who shall thereupon pay such expense, the amount thereof having been approved by the judge to whom such application was made. Where such person appeals to the Appellate Division of the Superior Court and copies of the transcript of the proceedings in the trial court are needed therefor he may make a similar application to such court which, being satisfied of the facts stated and the sufficiency thereof, may certify the expense and amount thereof to the county treasurer who shall thereupon pay such expense." N. J. S. 2A:152–17.

Rinaldi's appeal was unsuccessful, and he is now an inmate in the New Jersey State Prison.

As compensation for his work in prison, Rinaldi earns 20 cents a day, five days a week. Since late 1963, however, every day's pay has been withheld from him by prison officials and sent to the Treasurer of Essex County, in order to reimburse the county for the $215 cost of the transcript it provided for his appeal. This has been done in accordance with a statute enacted by New Jersey in 1956, shortly after this Court's decision in *Griffin* v. *Illinois*, 351 U. S. 12. Rinaldi brought this suit to enjoin enforcement of the statute on the ground that it is unconstitutional.[2] A three-judge Federal District Court denied relief, 238 F. Supp. 960, and we noted probable jurisdiction, 382 U. S. 1007.

The statute in question is N. J. S. 2A:152–18, and it provides as follows:

> "The county treasurer shall file a notice of [the payment by the county] and the amount thereof with the institution in which said person, upon whose application the transcript of the record was prepared, is confined, and, to the extent of the expense incurred, the county treasurer shall be reimbursed from any institutional earnings of such person, in the event that the application for relief is denied by . . . an appellate court."

Rinaldi attacked the constitutionality of this statute on the basis of our decisions defining the duty of a State,

[2] The suit was brought pursuant to 42 U. S. C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

under the Equal Protection Clause and the Due Process Clause, not to limit the opportunity of an appeal in a criminal case because of the appellant's poverty. *Griffin* v. *Illinois, supra; Burns* v. *Ohio,* 360 U. S. 252; *Draper* v. *Washington,* 372 U. S. 487; cf. *Smith* v. *Bennett,* 365 U. S. 708; *Lane* v. *Brown,* 372 U. S. 477. A logical extension of these decisions, the appellant contends, would prohibit a State from discouraging an indigent's freedom to appeal by saddling him with the obligation of paying for the cost of a transcript in the event his appeal is unsuccessful. We do not reach this contention, however, because we find the statute constitutionally deficient upon a different ground.

The New Jersey law does not impose this financial burden upon all who have been convicted in its courts and whose appeals have been unsuccessful. It requires no repayment at all from a man who has received a suspended sentence or been placed on probation, regardless of how high his subsequent earnings may be. It requires no repayment at all from an unsuccessful appellant who has been sentenced only to pay a fine.[3] Instead, the law fastens the duty of repayment only upon a single class of unsuccessful appellants—those who are confined in institutions.[4] We find that the discriminatory classifica-

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[3] It is true that some indigents who are fined may not be able to pay the fine. New Jersey provides that they may be placed at labor in an institution until the fine is paid. N. J. S. 2A:166–14; N. J. S. 2A:166–16. Those who are convicted of misdemeanors, however, may be permitted to go at large until the fine is paid. N. J. S. 2A:166–15. Moreover, felony defendants indigent for transcript purposes may be able to obtain the money to pay a fine and thus avoid confinement in an institution and the reimbursement obligation that such confinement entails.

[4] Moreover, in view of another New Jersey statute, it appears that wages may not be withheld from every inmate who would otherwise be indebted to a county. N. J. S. 30:4–92 provides in relevant part: "Compensation for inmates of correctional institu-

tion imposed by this law violates the requirements of the Equal Protection Clause.

The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. *McLaughlin* v. *Florida*, 379 U. S. 184, 189–190. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. "The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same." *Tigner* v. *Texas*, 310 U. S. 141, 147. Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made." *Baxstrom* v. *Herold*, 383 U. S. 107; *Carrington* v. *Rash*, 380 U. S. 89, 93; *Louisville Gas Co.* v. *Coleman*, 277 U. S. 32, 37; *Royster Guano Co.* v. *Virginia*, 253 U. S. 412, 415.

We have been referred to no record of legislative history that might disclose with precision what this law was designed to achieve, but the statute itself bears the heading "Reimbursement." We may assume that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefited from county expenditures. To fasten a financial burden only upon those unsuccessful appellants who

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tions may be in the form of cash or remission of time from sentence or both." Hence, some inmates may not receive cash in exchange for their labor. Other inmates, of course, may not be assigned to work. The reimbursement statute appears to allow for these variations insofar as it provides that ". . . the county treasurer shall be reimbursed from *any* institutional earnings of such person." (Emphasis supplied.)

are confined in state institutions, however, is to make an invidious discrimination. Those appellants who have been sentenced only to pay fines have been accorded the same benefit by the county—a transcript used in an unsuccessful appeal, and all that distinguishes them from their institutionalized counterparts is the nature of the penalty attached to the offense committed. There is no defensible interest served by focusing on that distinction as a classifying feature in a reimburement statute, since it bears no relationship whatever to the purpose of the repayment provision. Likewise, an appellant subject only to a suspended sentence or to probation is likely to differ from an inmate only in the extent of his criminal record. That, too, is a trait unrelated to the fiscal objective of the statute. Finally, the classification established by the statute cannot be justified on the ground of administrative convenience. Any supposed administrative inconvenience would be minimal, since repayment could easily be made a condition of probation or parole,[5] and those punished only by fines could be reached through the ordinary processes of garnishment in the event of default.[6]

Apart from its fiscal objective, the only other purpose of this law advanced by the appellees is the deterrence of frivolous appeals. Assuming a law enacted to perform that function to be otherwise valid, the present

[5] See N. J. S. 2A:168–2; N. J. S. 2A:167–8. See, Kamisar and Choper, The Right to Counsel in Minnesota: Some Field Findings and Legal-Policy Observations, 43 Minn. L. Rev. 1, 23–24:

"The practice of certain judges in some of [the counties studied] and of all judges in others is to require, as a condition of probation, that the convicted indigent repay the county's expenditure for his lawyer. The probation officer usually informs the judge of the amount the defendant should be expected to pay each week. The survey indicates that this condition of probation is rarely, if ever, violated."

[6] See N. J. S. 2A:17–50.

statutory classification is no less vulnerable under the Equal Protection Clause when viewed in relation to that function. By imposing a financial obligation only upon inmates of institutions, the statute inevitably burdens many whose appeals, though unsuccessful, were not frivolous, and leaves untouched many whose appeals may have been frivolous indeed.

This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts. *Griffin* v. *Illinois*, 351 U. S. 12; *Douglas* v. *California*, 372 U. S. 353; *Lane* v. *Brown*, 372 U. S. 477; *Draper* v. *Washington*, 372 U. S. 487. We may assume that a State can validly provide for recoupment of the cost of appeals from those who later become financially able to pay. But any such provision must, under the Equal Protection Clause, be applied with an even hand.

The judgment is reversed, and the case is remanded to the District Court for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 940.—October Term, 1965.

Joseph A. Rinaldi, Appellant, v. Howard Yeager, Warden, et al. } On Appeal from the United States District Court for the District of New Jersey.

[May 31, 1966.]

Mr. Justice Harlan, dissenting.

New Jersey recoups the cost of trial transcripts furnished to indigents out of prison allowances made to incarcerated prisoners, but does not seek reimbursement from parolees or convicted defendants not imprisoned. The Court holds this differentiation to violate the Equal Protection Clause. I am unable to agree. Under conventional equal-protection standards which disapprove only irrational and arbitrary classifications, the statute is plainly valid. See *McLaughlin* v. *Florida*, 379 U. S. 184, 190–191; *McGowan* v. *Maryland*, 366 U. S. 420, 426; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78–79. Surely the State might reasonably choose to reimburse itself for such transcript costs out of prison allowances, but deem it not worth the added time and trouble, or even advisable, to attempt to extract such charges from a convict not in prison who must support himself on his own resources. Adhering to the traditional test of rationality, I would affirm the decision of the District Court.*

*I find no substance to appellant's main argument, which the Court lays aside, that to permit any such recoupment from an indigent is an unconstitutional deterrent to appeal. Nor do I think there is any force to the argument in n. 4 (*ante*, pp. 3–4), not even suggested by appellant, which at best goes to the validity of the statutes governing compensation and not to the reimbursement statute being reviewed.